

**SUMMARY OF THE**  
**REPORT OF THE JUDICIAL CONFERENCE**  
**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

The Committee on Rules of Practice and Procedure recommends that the Judicial Conference:

1. Approve the proposed amendments to Bankruptcy Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 7012, 7022, 7023.1, 8001, 8003, 9006, 9009, and 9024 and new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law . . . . . p. 17
2. Approve the proposed revisions to Bankruptcy Official Forms 1, 3A, 3B, 4, 5, 6, 7, 9A-I, 10, 16A, 18, 19, 21, 22A, 22B, 22C, 23, and 24 to take effect on December 1, 2007 . . . . . p. 17
3. Approve the proposed new Bankruptcy Official Forms 25A, 25B, 25C, and 26 to take effect on December 1, 2008 . . . . . p. 17
4. Approve the proposed amendments to Criminal Rules 1, 12.1, 17, 18, 32, 41(b), 60, and new Rule 61, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law . . . . . p. 27
5. Approve proposed new Evidence Rule 502, and transmit it to Congress with a recommendation that it be adopted by Congress in accordance with the law . p. 32
6. Approve sending the report on the Necessity and Desirability of Amending the Federal Rules of Evidence to Codify a “Harm to Child” Exception to the Marital Privileges to Congress in accordance with the law . . . . . p. 34

<p>NOTICE</p> <p>NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE JUDICIAL CONFERENCE ITSELF.</p>
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The remainder of the report is submitted for the record, and includes the following items for the information of the Conference:

- ▶ Time-Computation Project . . . . . pp. 2-4
- ▶ Federal Rules of Appellate Procedure . . . . . pp. 4-6
- ▶ Federal Rules of Bankruptcy Procedure . . . . . pp. 6-20
- ▶ Federal Rules of Civil Procedure . . . . . pp. 20-22
- ▶ Federal Rules of Criminal Procedure . . . . . pp. 22-30
- ▶ Federal Rules of Evidence . . . . . pp. 30-34
- ▶ Long-Range Planning . . . . . p. 34

**REPORT OF THE JUDICIAL CONFERENCE**

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES:**

The Committee on Rules of Practice and Procedure met on June 11-12, 2007. All members attended.

Representing the advisory rules committees were: Judge Carl E. Stewart, chair, and Professor Catherine T. Struve, reporter, of the Advisory Committee on Appellate Rules; Judge Thomas S. Zilly, chair, and Professor Jeffrey W. Morris, reporter, of the Advisory Committee on Bankruptcy Rules; Judge Lee H. Rosenthal, chair, and Professor Edward H. Cooper, reporter, of the Advisory Committee on Civil Rules; Judge Susan C. Bucklew, chair, and Professor Sara Sun Beale, reporter, of the Advisory Committee on Criminal Rules; and Judge Jerry E. Smith, chair, and Professor Daniel J. Capra, reporter, of the Advisory Committee on Evidence Rules.

Participating in the meeting were Peter G. McCabe, the Committee's Secretary; Professor Daniel R. Coquillette, the Committee's reporter; John K. Rabiej, Chief of the Administrative Office's Rules Committee Support Office; James N. Ishida and Jeffrey N. Barr, attorneys in the Office of Judges Programs in the Administrative Office; Joe Cecil of the Federal Judicial Center; and Professor R. Joseph Kimble and Professor Geoffrey C. Hazard, consultants to the Committee. Also in attendance were Alice S. Fisher, Assistant Attorney General of the Criminal Division, and Ronald J. Tenpas, Associate Deputy Attorney General, Department of Justice.

**NOTICE**

NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL  
CONFERENCE UNLESS APPROVED BY THE JUDICIAL CONFERENCE ITSELF.

## **TIME-COMPUTATION PROJECT**

Two years ago, the Committee created the Time-Computation Subcommittee and asked it to examine the time-computation provisions found in the Appellate, Bankruptcy, Civil, and Criminal Rules, with a view to simplifying those provisions and eliminating inconsistencies among them. The project was launched in response to frequent complaints by practitioners about the time and energy expended in calculating time periods, and to comments by judges about the anomalous results of the current computation provisions.

The subcommittee, in consultation with the advisory committees and the Committee, drafted a proposed template for an amended time-computation rule that would be consistent across the federal procedural rules. The template's principal simplifying innovation is its adoption of a "days-are-days" approach to computing all time periods. Under some of the current rules, intermediate weekends and holidays are omitted when computing short periods but included when computing longer periods. By contrast, under the template rule, intermediate weekends and holidays are counted regardless of the length of the specified period. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules adopted the template with limited, appropriate modifications to account for differences in each set of rules.

The advisory committees also reviewed each set of rules to ensure that the time periods, including those affected by the template rule, were reasonable. The advisory committees concluded that virtually all short time deadlines should be extended to adjust for the effect of including intermediate weekends and holidays in calculating the time periods. To further simplify time-counting, the advisory committees changed most periods of less than 30 days to multiples of 7 days. The committees adopted 7, 14, 21, and 28-day periods whenever possible, so that deadlines will usually fall on weekdays, avoiding the need to consider weekends. The result in virtually every rule was to increase the existing time periods, for example, from 10 days

to 14 days. Periods longer than 30 days did not present the same time-calculation difficulties as shorter periods and were not changed. The advisory committees' comprehensive review of all rules containing a time period resulted in proposed amendments to a total of 91 rules.

Other changes proposed by the template rule clarify how to count forward when the period measured is after an event and the deadline falls on a weekend or holiday, for example, 20 days after service of a motion; and how to count backward when the period measured is before an event and the deadline falls on a weekend or holiday, for example, 10 days before a scheduled hearing. The proposed template rule also provides for the computation of hourly time periods to address recent legislation that provides, for example, 72 hours for action.

The proposed template rule also addresses the special timing considerations that accompany electronic filing. Under the proposal, unless a statute, local rule, or court order provides otherwise, the last day of a period for an electronic filing ends at midnight in the court's time zone, while the last day for a paper filing ends when the clerk's office is scheduled to close. Filing deadlines are presumptively extended if the clerk's office is inaccessible. The proposed template rule provides a court with more flexibility to define the meaning of "inaccessibility," which can vary depending on whether a filing is electronic or paper. Neither the proposed template rule nor the Committee Note specifies the meaning of "inaccessibility," leaving such definition to local rules and case law as they may develop in particular cases in light of local practices and conditions. Thus, a local rule could, for example, prescribe the effect of severe weather on filing deadlines, which might be different in a rural district than in a compact urban district.

The proposed amendments to Appellate, Bankruptcy, Civil, and Criminal Rules containing the template rule and the changes to time periods in individual rules will be published in August 2007.

Moreover, the time-computation provisions in the procedural rules also generally apply to statutory time periods affecting court proceedings. If such a statute contains a short time period that is computed using the approach of excluding intermediate weekends and holidays, applying the template rule could shorten the period. The advisory committees will seek legislation to extend some short time deadlines, such as five or seven days, contained in statutes that affect court proceedings, to adjust for the change in the time-computation rules. The advisory committees will work with the Department of Justice and the Congressional Research Office to identify statutes in which such a change could be helpful. It is hoped that the rules amendments and legislation can be synchronized so that both take effect on December 1, 2009.

## **FEDERAL RULES OF APPELLATE PROCEDURE**

### ***Rules Approved for Publication and Comment***

The Advisory Committee on Appellate Rules proposed amendments to Rules 4, 22, 26, and 40, and a new Rule 12.1 with a recommendation that they be published for comment.

The advisory committee also recommended publishing proposed rule amendments as part of the time-computation project discussed above. The proposed amendment to Rule 26 is based on the template rule for computing time periods in a consistent way across the federal procedural rules. Changes to the time periods in 15 Appellate Rules are proposed, including Rules 4, 5, 6, 10, 12, 15, 19, 25, 26, 27, 28.1, 30, 31, 39, and 41.

The proposed amendment to Rule 4 eliminates an ambiguity, arising from the 1998 restyling of the Appellate Rules, which might be construed to require an appellant to amend a notice of appeal filed before a district court amends the judgment, even if the amendment favors the appellant. The amendment also makes clear that the 60-day appeal period applies in a case in which an officer or employee of the United States is sued in an individual capacity for acts or omissions occurring in connection with duties performed on behalf of the United States.

The proposed amendment to Rule 22 conforms the rule to changes proposed to Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. § § 2254 or 2255.

The proposed amendment to Rule 26, in addition to the changes made to adopt the template rule, clarifies the operation of the three-day rule when a time period ends on a weekend or holiday.

Rule 40 would be amended to make clear that the 45-day period to file a petition for panel rehearing applies in a case in which an officer or employee of the United States is sued in an individual capacity for acts or omissions occurring in connection with duties performed on behalf of the United States.

Proposed new Rule 12.1 sets out procedures reflecting the practice of most courts to permit a party to request an “indicative ruling” on a posttrial motion if relief in the district court is sought during the pendency of an appeal. The proposed procedures ensure proper coordination of proceedings dealing with indicative rulings in the district court and court of appeals.

The Committee approved the advisory committee’s recommendation to publish the proposed amendments for public comment.

### ***Informational Items***

In 2006 the advisory committee requested each court of appeals to review its briefing requirements. The committee emphasized the need to make those requirements readily accessible to practitioners and urged each circuit to consider whether its briefing requirements are necessary. To date, eight circuits have responded. The remaining circuits continue to study the issue.

The committee decided to defer consideration of an amendment designed to conform Rule 4 to changes proposed to Rule 11 of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 or 2255.

The committee also decided to defer consideration of a proposed amendment to Rule 29, which is modeled on Supreme Court Rule 37.6. The proposed amendment requires a notice in every amicus brief (except those filed by certain government entities), indicating whether a party's counsel had any role in authoring the brief and identifying any person or entity who contributed financially to the brief's preparation or submission.

## **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

### ***Rules Approved for Approval and Transmission***

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 7012, 7022, 7023.1, 8001, 8003, 9006, 9009, and 9024; proposed new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011; proposed revisions to Official Forms 1, 3A, 3B, 4, 5, 6, 7, 9, A-I, 10, 16A, 18, 19, 21, 22A, 22B, 22C, 23, 24; and proposed new Official Forms 25A, 25B, 25C, and 26 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments and new rules (with the exception of technical amendments to Rules 7012, 7022, 7023.1, and 9024), and Official Forms were circulated to the bench and bar for comment in August 2006. The scheduled public hearings on the proposed changes were canceled because no one asked to testify.

In August 2005, the Executive Committee, on recommendation of this Committee, authorized distribution to the courts of Interim Bankruptcy Rules with the recommendation that they be adopted to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of



2005 (“Act”), which generally became effective on October 17, 2005 (Pub. L. No. 109-8). Most of the amendments and new rules proposed to the Bankruptcy Rules are based on the Interim Rules, which were adopted by virtually all bankruptcy courts in local rules or general orders until final rules could be put in place to implement the Act. Based on the favorable experience of the bench and bar with the Interim Rules, the proposed amendments to the national rules use the Interim Rules language, with only slight adjustments to certain rules. A handful of additional amendments and new rules, which were not included in the Interim Rules, are also proposed to address provisions of the 2005 Act that did not require immediate implementation.

The proposed amendment to Rule 1005 (Caption of Petition) requires a debtor to disclose all names or aliases used by the debtor in the past eight rather than six years. The amended rule also requires disclosure of the last four digits of an individual debtor’s taxpayer-identification number in the title of a case.

The proposed amendment to Rule 1006 (Filing Fee) directs the debtor in a chapter 7 case to use the appropriate Official Form to apply for a filing fee waiver.

The proposed amendment to Rule 1007 (Lists, Schedules, Statements, and other Documents; Time Limits) requires a debtor to file a variety of documents mandated under the Act. The amendment limits the extension of time that may be granted to a small-business debtor to file schedules and statements. The amendment also requires a debtor filing a petition to commence a case under chapter 15 to include a list of entities with whom the debtor has been engaged in litigation in the United States.

The proposed amendment to Rule 1009 (Amendments of Voluntary Petitions, Lists, Schedules, and Statements) corrects a cross-reference to the Code.

The proposed amendment to Rule 1010 (Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign Nonmain Proceeding) requires a representative in a

pending foreign nonmain proceeding to serve a summons and petition on the debtor and any entity against whom the representative is seeking provisional relief.

The proposed amendment to Rule 1011 (Responsive Pleading or Motion in Involuntary and Cross-Border Cases) requires a corporation involved in a cross-border insolvency case to file a corporate disclosure ownership statement. Other provisions are amended to conform to the new proceedings governing chapter 15.

The proposed amendment to Rule 1015 (Consolidation or Joint Administration of Cases Pending in Same Court) conforms the cross-references to renumbered § 522 of the Code.

The proposed amendment to Rule 1017 (Dismissal or Conversion of Case; Suspension) permits a party in interest to move to dismiss a chapter 7 consumer-debt case as abusive, if the party states with particularity the circumstances of the alleged abuse.

The proposed amendment to Rule 1019 (Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case) preserves deadlines for motions to dismiss a case under § 707(b) upon conversion from chapter 13 to chapter 7.

The proposed amendment to Rule 1020 (Small Business Chapter 11 Reorganization Case) replaces the old rule and provides procedures to determine whether the debtor is a small business. A party objecting to the small-business designation must file objections within a limited time period.

Proposed new Rule 1021 (Health Care Business Case) provides procedures for designating a debtor as a health-care business, including procedures authorizing a party in interest to object to the designation.

The proposed amendment to Rule 2002 (Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in

Ancillary and Other Cross-Border Cases, United States, and United States Trustee) requires a court promptly to provide all creditors a copy of the trustee's statement as to whether the debtor's case will be presumed to be abusive. The amendment also requires the court to provide notice of a hearing on a petition for recognition of a foreign proceeding. The notice must be provided to a debtor and entities against whom provisional relief is sought. Other proposed rule changes implement the Act's amendments to the business provisions of the Bankruptcy Code.

The proposed amendment to Rule 2003 (Meeting of Creditors or Equity Security Holders) authorizes a court to order that a meeting of creditors need not be convened if the debtor has already solicited acceptances of a plan prior to commencement of a case.

The proposed amendment to Rule 2007.1 (Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case) requires an elected trustee to file an affidavit setting forth information regarding that person's connection with creditors and others with an interest in the case.

Proposed new Rule 2007.2 (Appointment of Patient Care Ombudsman in a Health Care Business Case) requires the appointment of a patient-care ombudsman in the first 30 days of a health-care business case unless the court finds it is not necessary for the protection of patients. The new rule also establishes procedures for a party in interest to file a motion to appoint, terminate, or object to the appointment of an ombudsman.

The proposed amendment to Rule 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status) requires a small-business chapter 11 debtor to file periodic financial and operating reports. It also requires a foreign representative to file a notice of a change in status in the foreign proceeding or in the appointment of the foreign representative.

Proposed new Rule 2015.1 (Patient Care Ombudsman) establishes notice requirements concerning reports issued by a health-care ombudsman. The rule requires that any request by the

ombudsman to review patient records must be approved by a court. It also provides an opportunity to the trustee, patient, and other interested persons to object to the ombudsman's request.

Proposed new Rule 2015.2 (Transfer of Patient in Health Care Business Case) authorizes a trustee to relocate patients when a health-care debtor business is being closed. Patients are provided an opportunity to object to the trustee's relocation determination.

Proposed new Rule 2015.3 (Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest) requires a debtor in possession or trustee to file periodic reports of the value and profitability of any entity in which the debtor has a substantial or controlling interest.

The proposed amendment to Rule 3002 (Filing Proof of Claim or Interest) provides additional time for a governmental unit to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case, which conforms to the new time period required by the Act. Under the amendment, a court may extend the time for filing a proof of claim for a creditor with a foreign address.

The proposed amendment to Rule 3003 (Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases) provides that a court may extend the time for a creditor with a foreign address to file proofs of claim in a chapter 9 or 11 case.

The proposed amendment to Rule 3016 (Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case) provides that a small-business debtor need not file a disclosure statement if the plan includes adequate information and a court finds that a separate disclosure statement is unnecessary.

The proposed amendment to Rule 3017.1 (Court Consideration of Disclosure Statement in a Small Business Case) permits a court in a small-business chapter 11 case to conditionally approve a plan if adequate information is provided.

The proposed amendment to Rule 3019 (Modification of Accepted Plan Before or After Confirmation in a Chapter 9 Municipality or Chapter 11 Reorganization Case) establishes a procedure for filing and objecting to a proposed modification of a confirmed plan in an individual debtor's chapter 11 case.

The proposed amendment to Rule 4002 (Duties of Debtor) requires a debtor to provide a government-issued picture identification and evidence of a social security number, current income, recent Federal income tax returns or tax transcripts, and financial accounts existing when the case commenced.

The proposed amendment to Rule 4003 (Exemptions) allows a trustee to object to an exemption at any time up to one year after the closing of a case if the exemption was fraudulent. The amendment also conforms the rule to § 522(q) of the Code, as revised by the Act, which limits the state homestead exemption to \$138,875 if the debtor had been convicted of a felony or owed a debt arising from certain causes of action.

The proposed amendment to Rule 4004 (Grant or Denial of Discharge) requires a debtor to complete a financial management program before the court may enter a discharge, and authorizes the court to postpone a discharge to determine whether the debtor has committed a felony or owes a debt arising from certain causes of action within a particular time frame.

The proposed amendment to Rule 4006 (Notice of No Discharge) requires the clerk to provide notice to all parties in interest, including the debtor, that no discharge was entered.

The proposed amendment to Rule 4007 (Determination of Dischargeability of a Debt) provides the time limits governing the filing and notice of a complaint to determine the dischargeability of a debt under § 532(c) of the Code in a chapter 13 case.

The proposed amendment to Rule 4008 (Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement) establishes a deadline for filing a reaffirmation agreement. The amendment also requires a debtor to file a signed statement showing total income and expenses from schedules I and J and an explanation of any discrepancies from the debtor's income and expenses at the time of the filing of the reaffirmation agreement.

The proposed amendment to Rule 5001 (Courts and Clerks' Offices) authorizes a bankruptcy judge in emergency situations to hold hearings outside the district in which the case is pending under 28 U.S.C. § 152(c).

The proposed amendment to Rule 5003 (Records Kept By the Clerk) allows government-taxing authorities to designate addresses to use for the service of a request under § 505(b)(1) of the Code.

Proposed new Rule 5008 (Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors) requires a clerk to give written notice to all creditors no later than 10 days after the filing of a petition that a presumption of abuse has arisen.

The proposed amendment to Rule 6004 (Use, Sale, or Lease of Property) requires the appointment of a consumer-privacy ombudsman if a trustee proposes to sell personally identifiable information in certain circumstances.

Proposed new Rule 6011 (Disposal of Patient Records in Health Care Business Case) requires a trustee to notify patients that their medical records will be destroyed if unclaimed for one year.

The proposed amendment to Rule 8001 (Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals) implements the provisions for direct appeals to the courts of appeals that the Act added in 2005.

The proposed amendment to Rule 8003 (Leave to Appeal) provides that a certification by the lower court or the allowance of leave to appeal by the court of appeals satisfies the requirement for leave to appeal, even if no motion for leave to appeal has been filed.

The proposed amendment to Rule 9006 (Time) provides that extensions of time for filing schedules and a statement of financial affairs by a small-business debtor cannot extend beyond the time set in § 1116(3) of the Code.

The proposed amendment to Rule 9009 (Forms) provides that a plan proponent in a small-business chapter 11 case need not use an Official Form of a plan of reorganization and disclosure statement.

The advisory committee also proposed amendments to Rules 7012, 7022, 7023.1, and 9024, which were not published for public comment because they are technical and conform to “style” amendments to the Civil Rules that are scheduled to take effect on December 1, 2007. The proposed amendments to the Bankruptcy Rules modify cross-references to the Civil Rules, which were changed during the style project.

Official Form 1 (Voluntary Petition) would be amended to assist the courts in fulfilling the new statistical reporting requirements of 28 U.S.C. § 159. A notice is provided advising the attorney that the attorney’s signature constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

Official Form 3A (Application to Pay Filing Fee in Installments) would be amended to state that, until the filing fee is paid in full, the debtor will not make any additional payment or

transfer any additional property for services to an attorney or other person in connection with the case.

Official Form 3B (Application for Waiver of the Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing Fee in Full or in Installments) would be amended to make minor stylistic changes.

Official Form 4 (List of Creditors Holding 20 Largest Unsecured Claims) would be amended to require that a minor included in the list of creditors be identified only by the minor's initials.

Official Form 5 (Involuntary Petition) would be amended to facilitate collection of statistical information. The proposed revision also requires the disclosure of all aliases used by the debtor during the past eight rather than six years.

Official Form 6, including Schedules A through J, would be amended to: (1) require only the initials of a minor instead of the minor's full name; (2) eliminate the reference to a specific means of valuing property; and (3) make stylistic changes. Schedules I and J of Official Form 6 would be amended to include a statement advising debtors that the income and expense amounts on the schedules may differ from the income and expense amounts listed on the means test forms. The Declaration sheet in Official Form 6 would be amended to clarify the reference to page totals.

Official Form 7 (Statement of Financial Affairs) would be amended to require that a minor be identified by initials instead of full name on the form. The form would also be amended to require the debtor to provide information about part-time employment income and transfers that may be subject to recovery as preferences and fraudulent conveyances. The form would also be amended to reflect extensions of reach-back periods included in the Act's amendments to the Code.



Official Forms 9A through 9I (Notice of Commencement of Case, Meeting of Creditors and Deadlines) would be amended to include only the last four digits of any individual taxpayer-identification number in accordance with Rule 9037. In addition to stylistic changes, the forms would be revised to clarify the references to creditors with foreign addresses.

Official Form 10 (Proof of Claim) would be amended to conform to the changed priority scheme in § 507(a) of the Bankruptcy Code. The amended form would also provide more accurate addresses for transmittal of payments and notices, indicate that a particular proof of claim has been replaced, and update the Instructions and Definitions portions of the form.

Official Form 16A (Caption (Full)) and Official Form 18 (Discharge of Debtor in a Chapter 7 Case) would be amended to require the use of only the last four digits of an individual debtor's taxpayer-identification number.

Proposed Official Form 19 (Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer), replaces Forms 19A and 19B, which are proposed to be abrogated. The new form contains the bankruptcy petition preparer's notice and signed declaration stating that notice was given to the debtor as the Act requires.

Official Form 21 (Statement of Social-Security Number) would be amended to direct a taxpayer who does not have a social-security number to provide a taxpayer-identification number on the form.

Official Forms 22A, 22B, and 22C (Statement of Current Monthly Income and Means-Test Calculation in Chapter 7, 11, and 13 Cases) would be amended to facilitate the completion of the "means test" by individual debtors who contend that their debts are not primarily consumer debts. The forms require the debtor to provide extensive information to determine whether the debtor's filing for relief is presumptively abusive, as mandated by the Act. The information is used to calculate the debtor's current monthly income (CMI), which is the

monthly average of certain income that the debtor received in the six months before the bankruptcy filing. The means test operates by deducting defined allowances set out in IRS national and local standards for living expenses and payment of secured and priority debts and other limited expenses from the CMI, leaving disposable income presumptively available to pay unsecured nonpriority debt. Form 22A governs a chapter 7 case, Form 22B governs a chapter 11 case, and Form 22C governs a chapter 13 case.

Official Form 23 (Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management) would be amended to remind the debtor that the form should not be used to file a certification of prepetition credit counseling.

Official Form 24 (Certification to Court of Appeals by All Parties) would be amended to include a signature line for the appellee and the appellee's attorney.

Proposed new Official Form 25A ([Name of Proponent]'s Plan of Reorganization, Dated [Insert Date]) and Official Form 25B ([Name of Proponent]'s Disclosure Statement, Dated [Insert Date]) provide a model reorganization plan and a form of disclosure statement, which may be used in a small-business chapter 11 case. The forms are illustrative, not mandatory.

Proposed new Official Form 25C (Small Business Monthly Operating Report) assists a small-business debtor in a chapter 11 case fulfill its financial reporting responsibilities under the Act.

Proposed new Official Form 26 (Periodic Report Concerning Related Entities) implements Rule 2015.3, which requires the debtor to provide periodic reports on the profitability of any entities in which a chapter 11 debtor holds a substantial or controlling interest.

The advisory committee recommends that the proposed revisions to Official Forms 25A, 25B, 25C, and 26 take effect on December 1, 2008, because they are tied to proposed rule amendments scheduled to take effect on that date.

The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference –

- a. Approve the proposed amendments to Bankruptcy Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 7012, 7022, 7023.1, 8001, 8003, 9006, 9009, and 9024 and new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law;
- b. Approve the proposed revisions to Bankruptcy Official Forms 1, 3A, 3B, 4, 5, 6, 7, 9A-I, 10, 16A, 18, 19, 21, 22A, 22B, 22C, 23, and 24 to take effect on December 1, 2007; and
- c. Approve the proposed new Bankruptcy Official Forms 25A, 25B, 25C, and 26 to take effect on December 1, 2008.

The proposed amendments to the Federal Rules of Bankruptcy Procedure and Official Forms are in Appendix A with an excerpt from the advisory committee report.

#### ***Rules Approved for Publication and Comment***

The advisory committee submitted proposed amendments to Rules 4008, 7052, 9006, and 9021, and new Rules 1017.1 and 7058, and proposed revisions to Official Form 8 and a new Official Form 27 with a request that they be published for public comment.

The advisory committee also recommended publishing proposed rule amendments as part of the time-computation project discussed above. The proposed amendment to Rule 9006 is based on the template rule for computing time periods in a consistent way across the federal procedural rules. Changes to the time periods in 39 Bankruptcy Rules are proposed, including Rules 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2,

2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033.

Proposed new Rule 1017.1 establishes procedures for the court to consider a debtor's request to defer prepetition counseling because of exigent circumstances. The proposed amendment to Rule 4008 requires the entity filing a reaffirmation agreement also to file a cover sheet on the applicable Official Form that includes sufficient information for the court to determine whether the proposed reaffirmation agreement is presumed to be an undue hardship for the debtor.

The proposed amendment to Rules 7052 and 9021 and new Rule 7058 account for the amendment of Civil Rule 58 in 2002, which clarifies the time when a judgment that is not set forth on a separate document becomes final for appeal purposes. With some exceptions involving posttrial motions, Civil Rule 58 requires that every judgment be set forth on a separate document and provides a 150-day default appeal period if the requirement is not met. Under proposed new Rule 7058 and amendments to Rule 7052, the separate document requirement and the 150-day default appeal period will apply only to a judgment in an adversary proceeding. They will not apply to a judgment or order in other actions, including contested matters.

The proposed amendment to Rule 7052 clarifies that "entry of judgment" in an adversary proceeding means the entry of a judgment or order under the Bankruptcy Rules, either new Rule 7058 or Rule 9021. New Rule 7058 makes Civil Rule 58, including its separate document requirement and 150-day default appeal period, applicable to adversary proceedings. The proposed amendment to Rule 9021 makes clear that the separate document requirement does not apply outside of adversary proceedings.

The proposed amendments to Official Form 8 require the debtor to provide information on leased personal property and property subject to security interests. Proposed new Official

Form 27 requires the disclosure of financial information necessary for the court to determine whether a reaffirmation agreement creates a presumption of undue hardship for the debtor.

The Committee approved the advisory committee's recommendation to publish the proposed amendments to rules and to Official Forms for public comment.

### ***Informational Items***

The advisory committee withdrew a proposed amendment to Rule 5012 (Communication and Cooperation With Foreign Courts and Foreign Representatives), which provides an opportunity for a party in a case involving a cross-border insolvency to participate on timely request in a court's communication with a foreign court or a foreign representative.

The Act amended the Bankruptcy Code to require attorneys in every chapter 7 case to verify that they have made a reasonable inquiry into the accuracy of court filings submitted by the debtor with the petition, including schedules listing the debtor's assets and liabilities. The advisory committee addressed a "sense-of-Congress" provision in the Act that requests the Judicial Conference to consider amending the rules to apply the same verification requirement to filings by the debtor's attorney or by an unrepresented debtor in every bankruptcy case, not only in chapter 7 cases. An attorney's general responsibilities to review and vouch for the accuracy of papers filed with the court are set out under Rule 9011, the bankruptcy counterpart to Civil Rule 11. It is not clear whether the Act's chapter 7 verification requirements are more or less demanding than the general Rule 9011 requirements that already apply. The advisory committee declined to recommend amending Rule 9011 to apply the Act's chapter 7 verification requirement to all bankruptcy cases. Serious concerns were raised with extending the Act's verification requirement to the often more complex chapter 11 business reorganization cases in which thousands of documents might be filed. The advisory committee also did not believe that it was necessary to amend Rule 9011 to impose special verification requirements on consumer-

debtor attorneys. The Act's chapter 7 verification requirements are self-executing and do not require a rule change. The advisory committee recommended, however, that Official Form 1 be revised to alert consumer-debtor attorneys to the Act's verification requirements.

The advisory committee proposed a revision to Exhibit D to Official Form 1 (Individual Debtor's Statement of Compliance with Credit Counseling Requirement) to ensure that debtors are aware of the prepetition counseling requirement. The revision relates to a rule amendment that is scheduled to take effect in December 2009. The Committee approved the advisory committee's recommendation but decided to defer transmitting it to the Judicial Conference until next year, to coordinate with the pending rule amendment.

## **FEDERAL RULES OF CIVIL PROCEDURE**

### ***Rules Approved for Publication and Comment***

In June 2007, the Standing Committee approved the advisory committee's recommendation to publish for comment proposed amendments to Rule 81 and proposed new Rule 62.1. These will be published in a package with proposed amendments to Rule 8(c), Rule 13(f), Rule 15, and Rule 48 that were previously approved for publication

The advisory committee proposed amendments to additional rules as part of the time-computation project, which is discussed above. The proposed amendment to Rule 6 is based on the template used to compute time periods in a consistent way in each of the sets of procedural rules. Changes to the time periods in 23 Civil Rules and Supplemental Rules are proposed, including Rules 6, 12, 14, 15, 23, 27, 32, 38, 50, 52, 53, 54, 55, 59, 62, 65, 68, 71.1, 72, 81, and Supplemental Rules B, C, and G.

The proposed amendment to Rule 8(c) removes "discharge in bankruptcy" from the list of affirmative defenses set out in the rule to make it consistent with changes in substantive law.

The proposed amendment to Rule 13 deletes subdivision (f), which sets out standards for

amending pleadings to add a counterclaim. This subdivision is redundant of Rule 15, which sets out standards governing the amendment of pleadings in general.

The proposed amendment to Rule 15(a) modifies the right to amend once as a matter of course. This proposal eliminates the distinction drawn by present Rule 15(a), under which a responsive pleading immediately cuts off the right to amend, while a Rule 12 motion does not cut off the right. The proposed amendment provides that when a responsive pleading is required, service of a responsive pleading or a motion under Rule 12(b), (e), or (f) cuts off the right to amend 21 days after service.

The proposed amendment to Rule 48 adds a provision similar to that in the corresponding Criminal Rule that allows the court to poll the jury individually on its own and requires a poll at a party's request.

The proposed amendment to Rule 81 clarifies the definition of "state" to include commonwealths, territories, and possessions.

Proposed new Rule 62.1 is based on procedures followed in almost all circuits when a motion is made that the district court cannot grant because an appeal is pending. The proposed new rule makes such a procedure explicit in the rules, providing clarity and consistency. Under the proposal, the district court may defer decision, deny the motion, or state either that it would grant relief if the court of appeals remands or that the motion raises a substantial issue. The proposed new Civil Rule is integrated with the parallel proposed new Appellate Rule 12.1.

The Committee approved the advisory committee's recommendation to publish the proposed amendments and new rules for public comment.

### ***Informational Items***

The advisory committee chair agreed to defer a request to publish proposed amendments to Rule 56 for public comment. The agenda of the Committee's meeting was full and did not

allow sufficient time to discuss this proposal. The advisory committee intends to bring up the proposed amendments at the Committee's January 2008 or June 2008 meeting.

## **FEDERAL RULES OF CRIMINAL PROCEDURE**

### ***Rules Approved for Approval and Transmission***

The Advisory Committee on Criminal Rules submitted proposed amendments to Rules 1, 12.1, 17, 18, 32, 41(b), 45, 60, and new Rule 61 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments and rules (with the exception of a technical amendment to Rule 45) were circulated to the bench and bar for comment in August 2006. The advisory committee held a public hearing on the proposed changes in Washington, D.C. and heard testimony from several witnesses.

The proposed amendments, with the exception of proposed amendments to Rules 41 and 45, implement various provisions in the Crime Victims' Rights Act (18 U.S.C. § 3771). During the public comment period, the proposed amendments were criticized both for going too far and for not going far enough. Those who believed that the proposed amendments went too far raised the concern that they upset the rules' careful procedural framework, tipping the adversarial balance between the prosecution and the defendant and depriving the defense of critical rights. Some asserted that certain of the proposed amendments tipped the balance so far as to be unconstitutional. Others, including Senator Kyl, who was the Act's chief sponsor, asserted that the advisory committee did not fully implement the Act. The committee proposed rule amendments to implement the specific rights recognized in the Act. The committee did not propose a number of other amendments to many rules to provide specific rights in particular proceedings, not expressly stated in the Act but based on the Act's general right that crime victims be treated fairly and with respect.



As a threshold matter, the advisory committee discussed whether any of the criminal procedural rules should be amended to set out the statutory rights provided in the Crime Victims' Rights Act. Federal procedural rules generally do not repeat statutory provisions. First, it is unnecessary; a rule containing statutory substantive provisions cannot alter or add force to those statutory provisions. The Crime Victims' Rights Act is self-executing. Additionally, there are disadvantages to having the procedural rules repeat statutory provisions. Any future amendment of the underlying statute will make the parallel rule inconsistent and cause confusion until a corresponding change in the rule is promulgated, which is a deliberate and slow process. The inevitable language differences between a statute and a procedural rule create inconsistency and confusion that may generate litigation. The advisory committee recognized these concerns but concluded that carefully drafted rule amendments to implement the specific rights set out in the Act would be appropriate and helpful.

The advisory committee declined, however, to amend the vast majority of rules to include additional rights. The committee carefully reviewed proposals that would have amended a large number of individual rules to provide rights not expressly stated in the Act, based on the crime victims' general right to be treated fairly and with respect. The advisory committee concluded that such proposals would have inserted into the criminal procedural rules substantive rights that are not specifically recognized in the Act – in effect creating new victims' rights not expressly provided for in the Act.

The advisory committee was concerned that such proposals not only could create new substantive rights, they would change the rules in very detailed ways without a sufficient basis to do so. There is as yet little case law or judicial experience interpreting and applying the Act to specific cases and facts. Basing specific rules amendments on general statutory language, without the customary and important guidance provided by judges interpreting and applying the

statute to a developed record, is premature and invites error. The advisory committee was concerned that comprehensive rule changes made now, spelling out how this generally stated statutory right is to be implemented in particular proceedings, would freeze the jurisprudence into rigid requirements. Such requirements could hamper rather than help judges provide additional procedural protections that might be needed in individual cases. To make such sweeping, yet detailed, rules changes in the absence of guidance from experienced district judges around the country would have substituted the premature judgment of the rules committees for that of the judges charged with ensuring that the rights of defendants, the prosecution, and crime victims are protected in every case.

In addition, these proposals would have the potential of micro-managing judges in exercising their judgment in individual cases. To a large extent, the federal procedural rules have functioned effectively because they rely on the practical experience and wisdom of federal judges to carry out their duties without such detailed instructions.

Without a sound empirical basis, without guidance from judges and litigants who have applied the Act to different circumstances, and without guidance from victims and their representatives who have had actual experience in federal court under the Act, the advisory committee decided to defer taking action on these numerous other proposals for rule amendments based on the general statutory language. The committee intends to: (1) gather more information on precisely how the proposals would operate in specific proceedings and what effects they might have; (2) obtain empirical data substantiating the existence and nature of problems that could be addressed by rule; and (3) provide additional time for courts to acquire experience under the Act and to develop case law construing it.

The advisory committee proposed the following amendments to implement the specific rights set out in the Act. The proposed amendment to Rule 1 incorporates the Act's definition of

“crime victim” into the rules. The Committee Note to the rule makes clear the court’s authority to decide any dispute as to who is a victim in a particular case.

The proposed amendment to Rule 12.1 prevents automatic disclosure to the defense of a crime victim’s address and telephone number when an alibi defense is raised and the government intends to rely on the victim’s testimony to establish the defendant’s presence at the scene of the alleged offense. The amended rule requires the defendant to establish a need to obtain the information. After the need has been established, the amendment authorizes the court to “fashion a reasonable procedure that allows preparation of the defense and also protects the victim’s interests.”

The proposed amendment to Rule 17 requires for the first time a court order before a subpoena can be issued to a third party to obtain personal or confidential information concerning a victim. The proposed amendment requires that the victim be notified of such a request unless exceptional circumstances are shown to the court. The Committee Note provides examples of exceptional circumstances, including situations where evidence might be lost or destroyed without immediate action, or where providing notice would unfairly prejudice the defense by prematurely disclosing sensitive defense strategy.

Rule 18 would be amended to require a court to consider a victim’s convenience, as well as the convenience of the defendant and witnesses, in setting the place of trial.

Several changes are proposed to Rule 32, including adopting the more expansive definition of “crime victim” used in amended Rule 1. The new term applies to all crime victims, not only to a victim of a crime of violence or sexual abuse, as previously defined in the rule. The proposed amendment makes it clear that the presentence investigation should include information pertinent to restitution whenever the law permits the court to order restitution, not only when it requires restitution. A provision was also added to incorporate the Act’s language

that a victim has the right “to be reasonably heard” in judicial proceedings regarding sentencing. The Committee Note states that absent unusual circumstances, any victim who is in the courtroom should be allowed a reasonable opportunity to speak directly to the judge.

The last amendment addressed to victims’ rights, proposed new Rule 60, gathers in one rule a number of crime victims’ rights. Existing Rule 60 would be renumbered as Rule 61, and an entirely new rule focused on crime victims’ rights is proposed as a substitute. Proposed new Rule 60 incorporates several provisions of the Act. The new rule provides that: (1) the government must use its best efforts to give victims reasonable, accurate, and timely notice of any public court proceeding involving the crime; (2) the court must not exclude a victim from public court proceedings involving the crime unless there is evidence that the victim’s testimony would be changed if allowed to hear the testimony; (3) the victim has the right to be reasonably heard at any public hearing on release, plea, or sentencing; and (4) the court must promptly decide any motion asserting a victim’s rights, which may be raised by the victim or the victim’s legal representative in accordance with the Act.

The proposed amendment to Rule 41 authorizes a magistrate judge in a district in which activities related to a crime may have occurred, or in the District of Columbia, to issue a search warrant for property located outside any state or federal judicial district but within a United States territory, possession, or commonwealth or within certain premises associated with United States diplomatic and consular missions. The amendment responds to a problem that affects investigations of cases involving corruption in United States embassies and consulates around the world. Under the current rules, magistrate judges are not provided the authority to issue warrants for such locations. The proposed amendment was deliberately limited to specified locations to avoid thorny international issues, which defeated a broader proposal recommended in 1990.

The Pacific Islands Committee of the Judicial Council of the Ninth Circuit requested the advisory committee to consider deferring application of the rule to American Samoa until the local judiciary could study and comment on the proposal. The advisory committee received no comments on the proposal from the American Samoan judiciary during the six-month public comment period. Meanwhile, the Department of Justice urged the advisory committee to include American Samoa in the rule to facilitate ongoing criminal investigations that the current rules were hampering. The advisory committee decided to include American Samoa in the proposed amendment to Rule 41.

The proposed amendment to Rule 45 corrects a cross-reference to Civil Rule 5, which was renumbered as part of the general restyling of the Civil Rules. The amendment is technical and was not published for comment.

The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference –

Approve the proposed amendments to Criminal Rules 1, 12.1, 17, 18, 32, 41(b), 45, 60, and new Rule 61, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Criminal Procedure are in Appendix B with an excerpt from the advisory committee report.

### ***Rules Approved for Publication and Comment***

The Advisory Committee on Criminal Rules submitted proposed amendments to Rules 7, 32, 32.2, 41, and Rule 11 of the Rules Governing Proceedings under §§ 2254 and 2255 with a request that they be published for public comment.

The advisory committee proposed amendments to additional rules as part of the time-computation project, which is discussed above. The proposed amendment to Rule 45 is based on the template rule used to calculate time periods in a consistent way in the federal procedural

rules. Changes to the time periods in 14 Criminal Rules and §§ 2254 and 2255 Rules are proposed, including Criminal Rules 5.1, 7, 12.1, 12.3, 29, 33, 34, 35, 41, 45, 47, 58, 59, and Rule 8 of the Rules Governing Proceedings under §§ 2254 and 2255.

The proposed amendment to Rule 7 deletes, as unnecessary, a forfeiture-related provision that is more appropriately set out in Rule 32.2.

The proposed amendment to Rule 32 provides that a presentence report should state whether the government is seeking forfeiture to promote timely consideration of issues concerning forfeiture as part of the sentencing.

The proposed amendments to Rule 32.2: (1) state that the government's notice of forfeiture should not be designated as a count in an indictment or information and that the notice need not identify the specific property or money judgment that is subject to forfeiture; (2) require the court to enter a preliminary forfeiture order sufficiently in advance of sentencing to permit the parties to suggest modifications; (3) expressly authorize a court to enter a forfeiture order that is general in nature in a case in which it is not possible to identify all of the property subject to forfeiture; (4) clarify when the forfeiture order becomes final as to the defendant, state what the district court is required to do at sentencing, and require the government to submit a special verdict form; and (5) provide technical changes modifying the notice, publication, and interlocutory sale of property subject to forfeiture.

The proposed amendment to Rule 41 expressly applies the rule's warrant provisions to the search of electronically stored information. It sets up a two-stage process, authorizing the seizure of electronic storage media or the seizure and copying of electronically stored information and a subsequent review of the storage media or electronically stored information consistent with the warrant. Under the amendment, the inventory describing the electronically

stored information may be limited to a description of the physical storage media seized or copied.

The proposed amendments to Rule 11 of the Rules Governing Proceedings under §§ 2254 and 2255 make the requirements concerning certificates of appealability more prominent by adding and consolidating them in the pertinent Rule 11. The amendments also require the district judge to grant or deny the certificate at the time a final order is issued.

The Committee approved the advisory committee's recommendation to publish the proposed amendments to rules for public comment.

### *Informational Items*

The Committee declined to approve the advisory committee's recommendation that Rule 16 be amended to codify and expand the *Brady* requirements that prosecutors disclose exculpatory information to the defense. Several Committee members expressed concern about the breadth and consequences of the proposed amendment. Some of the concerns were that it could impose broad new obligations on the prosecution to disclose potential impeachment materials and create uncertainty about the standards and burdens for setting aside convictions. The Committee recommended that additional empirical data and study be obtained about the potential impact of the proposal, including study into districts' local rules that state *Brady* obligations. In addition, the Committee wanted to obtain information about the experience with the Department of Justice's recent revisions to its *U.S. Attorneys' Manual* expanding the statement of prosecutors' obligations to provide potentially exculpatory information to defendants.

The advisory committee declined to move forward with a proposed amendment to Rule 29, which would have prohibited a judge from entering a nonreviewable judgment of acquittal before the jury verdict. Though the Department of Justice urged amendment of the rule to

subject such judgments to appellate review, the advisory committee concluded that the rule provides needed flexibility to judges in multiple-defendant and multiple-count cases.

## **FEDERAL RULES OF EVIDENCE**

### **Rule Approved for Approval and Transmission**

The Advisory Committee on Evidence Rules submitted a proposed new Rule 502 with a recommendation that it be approved and transmitted to the Judicial Conference. The advisory committee proposed Rule 502 after the chairman of the House Judiciary Committee requested the Judicial Conference to undertake the rulemaking process to address concerns about privilege waivers. Unlike other proposed rule changes, under the Rules Enabling Act an amendment affecting an evidentiary privilege requires Congress to adopt the rule by affirmative act. (28 U.S.C. § 2074(b).)

The advisory committee held a conference at Fordham Law School with a select group of practitioners and academics to review a draft rule in April 2006. Appropriate changes were made to the draft to account for the suggestions and comments raised at the conference. The revised proposed rule was published for comment from the bench and bar in August 2006. The advisory committee held two public hearings on the proposed new rule at which numerous witnesses testified.

The proposed new rule facilitates discovery and reduces privilege-review costs by limiting the circumstances under which the privilege or protection is forfeited, which may happen if the privileged or protected information or material is produced in discovery. The burden and cost of steps to preserve the privileged status of attorney-client information and trial-preparation materials can be enormous. Under present practices, lawyers and firms must thoroughly review everything in a client's possession before responding to discovery requests. Otherwise they risk waiving the privileged status not only of the individual item disclosed but of



all other items dealing with the same subject matter. This burden is particularly onerous when the discovery consists of massive amounts of electronically stored information.

The proposed new rule is intended to reduce the risk of forfeiting the privilege or protection so that parties need not scrutinize information produced in discovery as much as they now do, in order to reduce the burden, cost, and time such scrutiny requires. The proposed rule does not affect the substantive law of privileges, which continues to be governed by common law in federal courts.

Proposed new Rule 502 contains four main provisions. The first codifies the majority view and protects a party from waiving a privilege if privileged or protected information is disclosed inadvertently in a federal court proceeding or to a federal public office or agency, unless the disclosing party was negligent in producing the information or failed to take reasonable steps seeking its return. The second protects a party from waiving a privilege covering all documents dealing with the same subject matter as a document that was disclosed, unless fairness requires such an extreme result. The third protects a party from waiving a privilege or protection if the court enters an order providing that disclosure of privileged or protected information does not constitute a waiver. The order is enforceable against all persons in any federal or state proceeding. The fourth provides that parties in a federal proceeding can enter into a confidentiality agreement providing for mutual protection against waiver in that proceeding, binding only the parties.

If there is a disclosure of privileged or protected information at the federal level, then state courts must honor Rule 502 in subsequent state proceedings. If there is a disclosure of privileged or protected information in a state proceeding, then admissibility in a subsequent federal proceeding is determined by the law that is most protective against waiver. As a practical matter, the proposed rule is consistent with the laws of most jurisdictions because a

large majority of state and federal courts have rules or statutes that protect against waiver. But a handful of jurisdictions do not follow the majority view and waive the privilege if the information was inadvertently disclosed, regardless of the care taken to protect against disclosure. Absent a rule that provided protection against waiver in all jurisdictions, like proposed Rule 502, a careful party would have to continue to scrutinize all documents being disclosed – with the attendant cost, burden, and delay – rather than risk forfeiting the privilege in a later law suit in one of the outlier jurisdictions.

At the suggestion of the House Judiciary Committee chair, the advisory committee also considered a rule that would allow persons to cooperate with government agencies and disclose privileged information without waiving the right to assert privilege as to other parties in subsequent litigation. The provision is controversial and is the subject of pending legislation. After careful review of the competing interests involved in “selective waivers,” the advisory committee determined that it would not recommend this provision. Unlike inadvertent waivers, which raise the costs and burdens of the discovery phase of litigation, an area of great concern to the rules committees, the selective waiver provision addresses policy matters, principally the effectiveness of government investigations, that are largely outside the competence and jurisdiction of the rules committees.

Any rule creating, establishing, or modifying an evidentiary privilege requires legislation. Consequently, the advisory committee recommended that proposed Rule 502 be transmitted directly by the Judicial Conference to Congress for its consideration with a recommendation that it adopt the rule.

The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference –

Approve proposed new Evidence Rule 502, and transmit it to Congress with a recommendation that it be adopted by Congress.

The proposed amendments to the Federal Rules of Evidence are in Appendix C with an excerpt from the advisory committee report.

***Report to Congress on Marital-Communications Privilege***

The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. No. 109-248) requires the “Committee on Rules, Practice, Procedure, and Evidence of the Judicial Conference of the United States [to] study the necessity and desirability of amending the federal rules of evidence to provide that the confidential marital communications privilege and the adverse spousal privilege shall be inapplicable in any Federal proceeding in which a spouse is charged with a crime against (1) a child of either spouse; or (2) a child under the custody or control of either spouse.”

With the exception of a single case, all courts that have considered the issue have already adopted an exception to the marital privileges for cases in which the defendant is charged with harming a child in the household. The single federal case that refused to adopt a harm-to-child exception to the adverse testimonial privilege is dubious authority, because its sole expressed rationale is that no court had yet established a harm-to-child exception, even though reported cases do in fact apply a harm-to-child exception in identical circumstances – including a previous case in the court's own circuit. The advisory committee decided not to recommend a rule amendment to respond to the aberrational decision that is not even controlling authority in its own circuit. Such an amendment is not only unnecessary but would also raise the following problems: (1) piecemeal codification of privilege law; (2) codification of an exception to a rule of privilege that is not itself codified; (3) difficulties in determining the scope of such an

exception, e.g., whether it would apply to harm to an adult child, a step-child, etc.; and (4) policy disputes over whether it is a good idea to force the spouse, on pain of contempt, to testify adversely to the spouse, when it is possible that the spouse is also a victim of abuse.

The advisory committee submitted a report as directed by the legislation setting out the reasons for its recommendation not to propose a rule. The report included draft language in the event Congress decided to move forward on the proposal.

The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference –

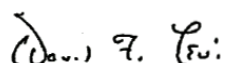
Approve sending the report on the Necessity and Desirability of Amending the Federal Rules of Evidence to Codify a “Harm to Child” Exception to the Marital Privileges to Congress.

The report is in Appendix D.

### **LONG-RANGE PLANNING**

The Committee was provided a report of the March 12, 2007, meeting of the Judicial Conference's committee chairs involved in long-range planning.

Respectfully Submitted,



David F. Levi

David J. Beck	Mark R. Kravitz
Douglas R. Cox	William J. Maledon
Sidney A. Fitzwater	Daniel J. Meltzer
Ronald M. George	Patrick J. McNulty
Harris L Hartz	James A. Teilborg
John G. Kester	Thomas W. Thrash

Appendix B – Proposed Amendments to the Federal Rules of Criminal Procedure

Appendix C – Proposed Amendments to the Federal Rules of Evidence

Appendix D – Report on the Necessity and Desirability of Amending the Federal Rules of Evidence to Codify a “Harm to Child” Exception to the Marital Privileges

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

**Agenda E-19 (Appendix A)**  
**Rules**  
**September 2007**

DAVID F. LEVI  
CHAIR

PETER G. McCABE  
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

CARL E. STEWART  
APPELLATE RULES

THOMAS S. ZILLY  
BANKRUPTCY RULES

LEE H. ROSENTHAL  
CIVIL RULES

SUSAN C. BUCKLEW  
CRIMINAL RULES

JERRY E. SMITH  
EVIDENCE RULES

**TO: Hon. David F. Levi, Chair**  
**Standing Committee on Rules of Practice and Procedure**

**FROM: Hon. Thomas S. Zilly, Chair**  
**Advisory Committee on Bankruptcy Rules**

**DATE: May 8, 2007**

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

I. INTRODUCTION

The Advisory Committee on Bankruptcy Rules met on March 29-30, 2007, at Marco Island, Florida.

\* \* \* \* \*

As a result of the meeting and other subsequent action, the Advisory Committee recommends a series of action items to the Standing Committee. First, the Committee recommends that the Standing Committee approve amendments to 32 rules and seven new rules, published for comment in August 2006. The Advisory Committee received 60 comments on the published rules and forms and reviewed 38 additional comments on the Interim Rules and Forms. After considering the comments, the Committee recommends approval of 25 amended rules and four new rules as published. The Committee recommends approval of seven amended rules (Rules 1007, 2002, 3002, 3019, 4003, 5003, and 9006), and three new Rules (new Rules 2015.1, 2015.3, and 6011) as revised as a result of the comments and further study. In the Committee's view, none of the changes requires republication.

Second, the Committee recommends approval of minor technical changes to four rules that are necessary as a result of the restyled Civil Rules. We do not believe these rule changes will require publication.

\* \* \* \* \*

Fifth, the Committee recommends approval of 18 amended Official Forms, four new Official Forms, and the combination of Official Forms 19A and 19B. The Committee recommends approval of six Official Forms and two new Official Forms as published in August 2006. Twelve Official Forms (Forms 1, 4, 6, 7, 9, 10, 22A, 22B, 22C, 23, and 24, and Exhibit D to Official Form 1) and two new Official Forms (Forms 25A and 25C) were changed after publication, and Official Forms 19A and 19B were combined, as a result of the comments and further study. The Committee recommends that these forms be approved by the Standing Committee and submitted to the Judicial Conference without further publication.

\* \* \* \* \*

As a result of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "2005 Act") Interim Rules were prepared by this Committee, approved by the Standing Committee, and adopted by standing order in every district in the United States. Time did not allow for publication of these Interim Rules before the October 17, 2005 effective date to the 2005 Act. The Interim Rules comprise the bulk of the package of new rules and rule amendments published in August 2006, which are now being recommended for final approval.

Our report to the Standing Committee dated May 24, 2006 (Revised June 30, 2006) included a statement as to whether each rule (ultimately published in August 2006) was previously approved as an Interim Rule, and the changes and reasons for any change to the Interim Rules. This report provides an explanation of changes being recommended to the published rules.

Similarly, the 2005 Act required amendments to, or creation of, many new Official Forms. These amendments and additions were recommended to the Judicial Conference and approved by it in August and October 2005. These Official Forms, as modified, were also published for comment in August 2006. The Committee report in the Spring of 2006 also explained the proposed changes to the Official Forms and the reasons for the proposed changes. This report outlines changes to the published Official Forms that the Committee recommends for final adoption without further publication.

In August 2006, proposed amendments to 32 Bankruptcy Rules, eight new rules, amendments to 21 Official Forms, and four new Official Forms were published for comment. All written comments were due by February 15, 2007. No party requested to testify at the public hearings scheduled for January 22, 2007, and the hearing was cancelled. However, the Committee reviewed the 60 written comments received on the published rules and forms and the 38 comments received on the Interim Rules and Forms. Copies of the comments are available on the Federal Rulemaking page of the Judiciary's website at:

[http://www.uscourts.gov/rules/2006\\_Bankruptcy\\_Rules\\_Comments\\_Chart.htm](http://www.uscourts.gov/rules/2006_Bankruptcy_Rules_Comments_Chart.htm) and  
<http://www.uscourts.gov/rules/BK%20Interim%20Rules%20Forms.htm>.

The Advisory Committee held numerous subcommittee telephone call meetings to discuss all the comments at great length. Since publication, I estimate a total of 20 subcommittee meetings lasting two to three hours were held to carefully analyze the comments. In addition, separate additional memorandums were prepared by the Reporter and other members of the Committee outlining the Recommendations of the various subcommittees. At the meeting of the full Advisory Committee in March 2007, the Committee carefully considered all the public comments, the recommendations of the subcommittees, and the views of the entire Advisory Committee. The Committee now provides the Standing Committee with its recommendations.



## II. ACTION ITEMS

A. Proposed Amendments to Bankruptcy Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 8001, 8003, 9006, and 9009, and new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference:

**The Advisory Committee recommends that the Standing Committee approve the following proposed amendments to the Bankruptcy Rules and Official Forms and submit them to the Judicial Conference.**

### 1. *Public Comment and Hearing*

The proposed amendments were published for comment in August 2006. A public hearing on the proposed amendments was scheduled for January 22, 2007, but there were no requests to appear at the hearing. The comments are summarized below immediately following each of the rules to which the comment relates. The Advisory Committee reviewed these comments and approved the amendments to the rules either as published or with changes that are described in the Changes Made After Publication section of this report.

### 2. *Synopsis of Proposed Amendments*

- (a) **Rule 1005 (conforming)** contains an amendment to require the disclosure of all names used by the debtor in the past eight years to implement the provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act) that extends the time between discharges from six to eight years. The rule is also amended to include an individual debtor's tax identification number among the information that must be limited to protect the debtor's privacy.
- (b) **Rule 1006** is amended to implement the provisions in the Act that, for the first time on a nationwide basis, authorize the courts to waive the payment of filing fees by debtors. The amendment directs the debtor to use the Official Form for requesting a fee waiver. The amendment also permits the court to allow the payment of the filing fee in installments even if the debtor has made a payment to an attorney in connection with the case.
- (c) **Rule 1007 (conforming)** is amended to reflect the expanded obligations of debtors to file a variety of documents and materials by the Act. The amendments address the filing of current monthly income statements and other forms to implement the means test imposed by the 2005 bankruptcy reform legislation. There are also changes to require debtors to file additional

materials such as payment advices and education income retirement accounts, as well as certificates for the completion of credit counseling and financial management programs mandated by the legislation. The rule is also amended to recognize the limitation on the extension of the time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added to the Bankruptcy Code by the Act in 2005, establishes a specific standard for the courts to apply in the event that the debtor in possession or the trustee seeks an extension for the filing of these forms for a period beyond 30 days after the order for relief. Finally, the rule is amended to require that any entity filing a petition for recognition to commence a case under chapter 15 of the Code file a list of entities with whom the debtor is engaged in litigation in the United States. This chapter was added to the Code by the Act. The recognition of a foreign proceeding makes § 362 of the Code operative in the case, so the amendment to the rule requires the entity filing a petition for recognition to file a list of parties to pending litigation with the debtor. These entities can then be notified prior to the imposition of the automatic stay that the petitioner has sought relief under chapter 15.

- (d) **Rule 1009 (technical)** is amended to correct a cross reference to the Bankruptcy Code due to the restructuring of § 521 of the Code by the Act.
- (e) **Rule 1010 (conforming)** is amended to implement the changes to the Bankruptcy Code made by the Act. It repealed § 304 of the Code and replaced it with chapter 15 governing both ancillary and cross-border cases. Under that chapter, a foreign representative commences a case by filing a petition for recognition of a pending foreign proceeding. This amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. The rule also provides that the court may direct that service be made on additional entities as appropriate.
- (f) **Rule 1011 (technical)** is amended to reflect the 2005 enactment of the Act which repealed § 304 of the Code and added chapter 15 to the Code. Section 304 covered cases “ancillary to foreign proceedings,” while chapter 15 of the Code governs cross-border insolvencies and introduces the concept of a petition for recognition of a foreign proceeding. The amendment implements this new terminology.
- (g) **Rule 1015 (technical)** is amended to change the cross references in the Rule to conform to the renumbered subsections of the provision of the Bankruptcy Code as amended by the 2005 Act.

- (h) **Rule 1017 (conforming)** is amended to implement the amendments to § 707(b) of the Code by the Act that permit parties in interest to move to dismiss the chapter 7 case of an individual whose debts are primarily consumer debts as abusive. The amendments to subdivision (e) of the rule preserve the time limits already in place for § 707 motions. The rule also requires that a motion filed under § 707(b)(3) state with particularity the circumstances that present the alleged abuse.
- (i) **Rule 1019 (conforming)** is amended because the Act is likely to lead to more conversions of cases to and from chapters 7 and 13. The amendments preserve deadlines for motions to dismiss a case under § 707(b) upon conversion of a case from chapter 13 to chapter 7.
- (j) **Rule 1020** is essentially a new rule that reflects the change in the definition of a small business debtor made by the Act. The former rule is deleted, and the new rule provides a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor. It also provides procedures for bringing to the court disputes regarding the proper characterization of the debtor. Because it is important to resolve such disputes early in the case, a time limit for objecting to the debtor's self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule. Subdivision (c), which relates the presence and activity of a committee of unsecured creditors, is designed to be consistent with the Code's definition of "small business debtor."
- (k) **Rule 1021** is new. It is added to the rules to implement § 101(27A) of the Code, added by the Act in 2005. That section defines health care businesses, and the rule authorizes parties in interest to seek an order identifying a debtor as a health care business. The debtor, in a voluntary case and the petitioning creditors in an involuntary case, will make the health care business identification on the petition. If a party in interest disagrees with the determination by the debtor or petitioning creditors that the debtor is not a health care business, the party can move for an order designating the debtor as a health care business.
- (l) **Rule 2002 (conforming and otherwise)** is amended to reflect the 2005 revisions to § 704 of the Bankruptcy Code in the Act requiring the court to provide a copy to all creditors of a statement by the United States trustee as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

The rule is also amended in several respects to implement amendments made to the business provisions of the Bankruptcy Code by the Act. Subdivision

(b) is amended to require that notice of a hearing on the approval of a plan to serve as a disclosure statement be given in a small business case in chapter 11. Subdivision (p)(1) is added to the rule to give the court flexibility to direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses now required by § 1514(d) of the Code. This portion of the rule recognizes that the court has discretion to establish procedures to determine, on its own initiative, whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest. Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court also may shorten the additional notice time if circumstances so warrant. Subdivision (p)(3) is added to the rule to provide that the court can, for cause, override a creditor's designation of a foreign mailing address.

Finally, Rule 2002 is amended to implement the provisions of chapter 15 of the Bankruptcy Code. Subdivision (q) is added to the rule to require that notice be given to the debtor and entities against whom provisional relief is sought of a hearing on a petition for recognition of a foreign proceeding. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

- (m) **Rule 2003 (technical)** is amended to implement the Act's amendment to § 341(e) of the Bankruptcy Code. The amendment to the rule authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened if the debtor had solicited acceptances of a plan prior to the commencement of the case. The amended rule recognizes that a meeting of creditors may not be held in those cases.
- (n) **Rule 2007.1 (conforming)** is amended to reflect the change in the manner of the election and appointment of trustees in chapter 11 cases. The 2005 amendments to the Bankruptcy Code reduce somewhat the role of the United States trustee in the appointment process, so the amendments to Rule 2007.1 limit that role and require the elected trustee to file an affidavit setting forth information regarding that person's connections with creditors and others with an interest in the case.

- (o) **Rule 2007.2 (conforming)** is new. It is added to the rules to govern the appointment of a health care ombudsman in the first 30 days of all health care business cases unless the court finds that the appointment is not necessary for the protection of patients. This is a new obligation created by § 333 of the Code added by the Act in 2005. The rule recognizes this obligation and provides that any party in interest that believes that the appointment of a health care ombudsman is unnecessary in the case must file its objection to the appointment within the first twenty days of the case. That entity also must notify other interested parties that the objection has been filed. The court will then consider the objection and determine whether to order the United States trustee to make the appointment. In the absence of any timely objections, the court will enter an order directing the United States trustee to appoint the ombudsman. The rule also permits parties in interest to file motions either to appoint or terminate the appointment of these ombudsmen, and it sets forth the procedure for approving the appointment.
  
- (p) **Rule 2015 (conforming)** is amended by inserting a new subdivision (d) to implement the 2005 enactment of § 1518 of the Code as a part of the Act. That section directs the foreign representative to make reports to the court, and the rule sets the time for the filing of those reports. Former subdivision (d) is renumbered as subdivision (e).
  
- (q) **Rule 2015.1** is new. It is added to implement § 333(b) and (c) added to the Code in 2005 by the Act. The rule requires ten days notice of reports to be made by the health care ombudsman and sets out the entities to whom the notice must be given. The rule permits the notice to relate to a single report or to periodic reports to be given throughout the course of the case. That is, the notice may serve as notice of all reports to be given by the ombudsman at specified intervals during the case. Interested parties will then be able to review the written reports or attend the hearings at which oral reports might be given. The Rule also implements § 333(c)(1) added to the Code in 2005 by the Act. The statute requires court approval of the ombudsman's review of the patient records with the imposition of appropriate restrictions to protect the confidentiality of the records. The rule requires the ombudsman to notify the United States trustee, the patient, and any family member or contact person whose name and address have been given to the trustee or the debtor that the ombudsman is seeking access to otherwise confidential patient records. This provides an opportunity for the patient and United States trustee to appear and be heard on the matter and should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality. A notice given under the rule is expressly made subject to applicable nonbankruptcy laws governing patient privacy.

- (r) **Rule 2015.2 (conforming)** is new. It is added to implement § 704(a)(12) which was added to the Code in 2005 by the Act. That section authorizes the trustee to relocate patients when a health care business debtor's facility is being closed. The statute permits the trustee to take this action without the need for any order from the court, but the notice required by this rule will enable patients who contend that the trustee's actions violate § 704(a)(12) to have those issues resolved. A notice given under the rule is expressly made subject to applicable nonbankruptcy laws governing patient privacy.
- (s) **Rule 2015.3** is new. It implements § 419 of the 2005 Act by requiring the filing of periodic reports of the value and profitability of any entity in which the debtor has a substantial or controlling interest. Reports are to be made on the appropriate Official Form. While § 419 of the 2005 Act places the obligation to report upon the "debtor," the rule extends the obligation to include cases in which a trustee has been appointed. The rule also establishes procedures for the determination of the applicability of the rule to specific debtors. Under the rule, the court can order that the reports not be filed in appropriate circumstances, such as when the information that would be included in these reports is already available to interested parties.
- (t) **Rule 3002 (conforming and otherwise)** is amended to conform to changes in the Code made by the Act. Under § 502(b)(9), governmental units asserting claims based on tax returns filed under § 1308 during a chapter 13 case have a different time period for filing proofs of those claims. Paragraph (c)(1) is amended to conform to § 502(b)(9).
- The rule is also amended to implement § 1514(d) which was added to the Bankruptcy Code by the Act. Subdivision (c)(6) gives the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim.
- (u) **Rule 3003 (technical)** is amended to implement § 1514(d), which was added to the Code by the Act in 2005, by making the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases.
- (v) **Rule 3016** is amended to recognize that, in 2005, the Act added § 1125(f)(1) to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1

and is subject to all other rules applicable to disclosure statements in small business cases.

- (w) **Rule 3017.1 (technical)** is amended to implement the Act's amendment to the Bankruptcy Code that permits the court in a small business chapter 11 case to conditionally approve a plan intended to provide adequate information. The plan is then treated as a disclosure statement under this rule.
- (x) **Rule 3019 (conforming)** is amended because the Act added to the Bankruptcy Code a provision for the modification of plans filed by individual debtors in chapter 11 cases. The rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.
- (y) **Rule 4002** is amended to implement the provisions of the Act that expand the obligation of debtors to provide additional evidence of personal identity, current income, and recent Federal income tax returns or tax transcripts. Amendments to the rule had been published for comment in August 2004, and this amendment carries forward from that proposed amendment the debtor's obligation to provide evidence of financial accounts existing at the time of the commencement of the case.
- (z) **Rule 4003 (conforming)** is amended to reflect the Act's addition of § 522(q) to the Bankruptcy Code. Section 522(q) imposes a \$125,000 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Bankruptcy Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider issues relating to § 522 late in the case, and thus the 30-day period for objections would not be appropriate for this provision. Thus, a new subdivision (b)(2) is added to provide a separate time limit for this provision.
- (aa) **Rule 4004 (conforming)** is amended to implement several provisions added to the Bankruptcy Code by the Act. The amendments address the postponement of the court's entry of a discharge pending the debtor's completion of a financial management program as well as the need to postpone the discharge to consider whether the debtor has committed a felony or owes a debt arising from certain causes of action within a particular time frame.
- (bb) **Rule 4006 (conforming)** is amended to reflect the Act's revision of the Bankruptcy Code that requires individual debtors to complete a course in personal financial management as a condition to the entry of a discharge. If

the debtor fails to complete the course, no discharge will be entered, but the case may be closed. The amended rule provides notice to parties in interest, including the debtor, that no discharge was entered.

- (cc) **Rule 4007 (conforming)** is amended because the Act expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c). Subdivision (d) is amended to establish a deadline for filing a complaint in a chapter 13 case only for § 523(a)(6), rather than for all of the categories of claims under § 523(c).
- (dd) **Rule 4008 (conforming)** is amended to reflect the Act's addition of §§ 524(k)(6)(A) and 524(m) to the Bankruptcy Code. The provisions require that a debtor file a signed statement in support of a reaffirmation, and authorize a court to review the agreements if, based on the assertions on the statement, the agreement is presumed to be an undue hardship. The rule revision requires that an accompanying statement show the total income and expense figures from schedules I and J and an explanation of any discrepancies. This will allow the court to evaluate the reaffirmation for undue hardship as § 524(m) requires.
- (ee) **Rule 5001** is amended to permit bankruptcy judges to hold hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the 2005 amendment to 28 U.S.C. § 152(c).
- (ff) **Rule 5003 (technical)** is amended to implement the addition of § 505(b)(1) to the Code by the Act in 2005. That section allows taxing authorities to designate addresses to use for the service of a request under that subsection.
- (gg) **Rule 5008** is new. The 2005 revisions to § 342 of the Bankruptcy Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, this rule requires that the clerk send a second notice.



- (hh) **Rule 5012 (conforming)** is withdrawn. The Advisory Committee concluded that the proposed rule should be studied further prior to its adoption. The matter has been referred back to the Subcommittee on Technology and Cross Border Insolvency.
- (ii) **Rule 6004 (conforming)** is amended to implement sections 332 and 363(b)(1)(B), which the Act added to the Code in 2005. Those sections require the appointment of a consumer privacy ombudsman in certain circumstances when a debtor proposes to sell personally identifiable information.
- (jj) **Rule 6011** is new. It is added to implement § 351(1) which was added to the Code in 2005 by the Act. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The statute also requires that individualized notice be sent to each patient and every family member and other contact person to whom the debtor is providing information about the patient's health. Subdivisions (a) and (b) establish minimum requirements for notices to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (c) directs the trustee to maintain proof of compliance with § 351(1)(B), but it prohibits filing the proof of compliance unless the court orders the trustee to file it under seal because the proof of compliance may contain patient names that should or must remain confidential. Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. Again, notices under this rule are expressly made subject to applicable nonbankruptcy laws governing patient privacy.
- (kk) **Rule 8001** is amended to implement the direct appeal provisions that the Act added in 2005. The Act amended 28 U.S.C. § 158 to authorize appeals directly to the courts of appeals upon certification either by the bankruptcy or district court or the bankruptcy appellate panel. Certification is also available to the parties either on request to the court, or if all of the parties agree. The rule also provides that review by the court of appeals, which is at its discretion, requires that a party file a timely notice of appeal.
- (ll) **Rule 8003** is amended to implement the direct appeal provisions that the Act added in 2005. It provides that a certification by the lower court or the allowance of leave to appeal by the court of appeals is deemed to satisfy the

requirement for leave to appeal even if no motion for leave to appeal has been filed.

- (mm) **Rule 9006 (technical)** is amended to recognize that extensions of time for filing schedules and a statement of financial affairs by small business debtors cannot be extended beyond the time set in § 1116(3) of the Code as added by the Act in 2005. This amendment operates in tandem with the amendment to Rule 1007(c) to recognize this restriction on expanding the time to file these documents in small business cases. The rule also is amended to limit the enlargement and reduction of the time to file a reaffirmation agreement.
- (nn) **Rule 9009 (technical)** is amended to provide that a plan proponent in a small business chapter 11 case need not use an Official Form of a plan of reorganization and disclosure statement. Absent the amendment, the Official Form would have to be used, and the 2005 Act anticipates the use of both an Official Form and a form that is adopted by local courts.

3. *Text of Proposed Amendments to Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 8001, 8003, 9006, and 9009, and new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011.*

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE\***

**Rule 1005. Caption of Petition**

1           The caption of a petition commencing a case under the  
2           Code shall contain the name of the court, the title of the case,  
3           and the docket number. The title of the case shall include the  
4           following information about the debtor: name, employer  
5           identification number, last four digits of the social-security  
6           number or individual debtor's taxpayer-identification number,  
7           any other federal ~~tax~~ taxpayer-identification number, and all  
8           other names used within ~~six~~ eight years before filing the  
9           petition. If the petition is not filed by the debtor, it shall  
10          include all names used by the debtor which are known to the  
11          petitioners.

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\* New material is underlined; matter to be omitted is lined through.

**COMMITTEE NOTE**

The rule is amended to require the disclosure of all names used by the debtor in the past eight years. Section 727(a)(8) was amended in 2005 to extend the time between chapter 7 discharges from six to eight years, and the rule is amended to implement that change. The rule also is amended to require the disclosure of the last four digits of an individual debtor's taxpayer-identification number. This truncation of the number applies only to individual debtors. This is consistent with the requirements of Rule 9037.

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**Changes Made After Publication:**

No changes were made after publication.

**Rule 1006. Filing Fee**

1           (a) GENERAL REQUIREMENT. Every petition shall  
2           be accompanied by the filing fee except as provided in  
3           subdivisions (b) and (c) of this rule. For the purpose of this  
4           rule, "filing fee" means the filing fee prescribed by 28 U.S.C.  
5           § 1930(a)(1)-(a)(5) and any other fee prescribed by the  
6           Judicial Conference of the United States under 28 U.S.C.

7 § 1930(b) that is payable to the clerk upon the commencement  
8 of a case under the Code.

9 (b) PAYMENT OF FILING FEE IN INSTALLMENTS.

10 (1) ~~Application for Permission to Pay Filing Fee in~~  
11 ~~Installments.~~ A voluntary petition by an individual shall be  
12 accepted for filing if accompanied by the debtor's signed  
13 application, prepared as prescribed by the appropriate Official  
14 Form, stating that the debtor is unable to pay the filing fee  
15 except in installments. ~~The application shall state the~~  
16 ~~proposed terms of the installment payments and that the~~  
17 ~~applicant has neither paid any money nor transferred any~~  
18 ~~property to an attorney for services in connection with the~~  
19 ~~case.~~

20 \* \* \* \* \*

21 (3) ~~Postponement of Attorney's Fees.~~ ~~The filing~~  
22 ~~fee~~ All installments of the filing fee must be paid in full

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

23 before the debtor or chapter 13 trustee may make further  
24 payments pay an to an attorney or any other person who  
25 renders services to the debtor in connection with the case.

26 (c) WAIVER OF FILING FEE. A voluntary chapter 7  
27 petition filed by an individual shall be accepted for filing if  
28 accompanied by the debtor's application requesting a waiver  
29 under 28 U.S.C. § 1930(f), prepared as prescribed by the  
30 appropriate Official Form.

**COMMITTEE NOTE**

Subdivision (a) is amended to include a reference to new subdivision (c), which deals with fee waivers under 28 U.S.C. § 1930(f), which was added in 2005.

Subdivision (b)(1) is amended to delete the sentence requiring a disclosure that the debtor has not paid an attorney or other person in connection with the case. Inability to pay the filing fee in installments is one of the requirements for a fee waiver under the 2005 revisions to 28 U.S.C. § 1930(f). If the attorney payment prohibition were retained, payment of an attorney's fee would render many debtors ineligible for installment payments and thus enhance their eligibility for the fee waiver. The deletion of this prohibition



6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

6           (4) Chapter 15 Case. In addition to the documents  
7           required under § 1515 of the Code, a foreign representative  
8           filing a petition for recognition under chapter 15 shall file  
9           with the petition: (A) a corporate ownership statement  
10           containing the information described in Rule 7007.1; and (B)  
11           unless the court orders otherwise, a list containing the names  
12           and addresses of all persons or bodies authorized to  
13           administer foreign proceedings of the debtor, all parties to  
14           litigation pending in the United States in which the debtor is  
15           a party at the time of the filing of the petition, and all entities  
16           against whom provisional relief is being sought under § 1519  
17           of the Code.

18           ~~(4)~~ (5) *Extension of Time.* Any extension of time  
19           for the filing of the lists required by this subdivision may be  
20           granted only on motion for cause shown and on notice to the  
21           United States trustee and to any trustee, committee elected



22 ~~pursuant to~~ under § 705 or appointed ~~pursuant to~~ under  
23 § 1102 of the Code, or other party as the court may direct.

24 (b) SCHEDULES, ~~AND~~ STATEMENTS, AND  
25 OTHER DOCUMENTS REQUIRED.

26 (1) Except in a chapter 9 municipality case, the  
27 debtor, unless the court orders otherwise, shall file the  
28 following schedules, statements, and other documents,  
29 prepared as prescribed by the appropriate Official Forms, if  
30 any:

31 (A) schedules of assets and liabilities; ;

32 (B) a schedule of current income and  
33 expenditures;

34 (C) a schedule of executory contracts and  
35 unexpired leases, ~~and;~~

36 (D) a statement of financial affairs, ~~prepared~~  
37 ~~as prescribed by the appropriate Official Forms;~~

8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

38                   (E) copies of all payment advices or other  
39                   evidence of payment, if any, received by the debtor from an  
40                   employer within 60 days before the filing of the petition, with  
41                   redaction of all but the last four digits of the debtor's social-  
42                   security number or individual taxpayer-identification number;  
43                   and

44                   (F) a record of any interest that the debtor has  
45                   in an account or program of the type specified in § 521(c) of  
46                   the Code.

47                   (2) An individual debtor in a chapter 7 case shall  
48                   file a statement of intention as required by § ~~521(a)~~ 521(2) of  
49                   the Code, prepared as prescribed by the appropriate Official  
50                   Form. A copy of the statement of intention shall be served on  
51                   the trustee and the creditors named in the statement on or  
52                   before the filing of the statement.

53                   (3) Unless the United States trustee has determined  
54                   that the credit counseling requirement of § 109(h) does not  
55                   apply in the district, an individual debtor must file a statement  
56                   of compliance with the credit counseling requirement,  
57                   prepared as prescribed by the appropriate Official Form which  
58                   must include one of the following:

59                               (A) an attached certificate and debt repayment  
60                   plan, if any, required by § 521(b);

61                               (B) a statement that the debtor has received  
62                   the credit counseling briefing required by § 109(h)(1) but does  
63                   not have the certificate required by § 521(b);

64                               (C) a certification under § 109(h)(3); or

65                               (D) a request for a determination by the court  
66                   under § 109(h)(4).

67                   (4) Unless § 707(b)(2)(D) applies, an individual  
68                   debtor in a chapter 7 case shall file a statement of current

10 FEDERAL RULES OF BANKRUPTCY PROCEDURE

69 monthly income prepared as prescribed by the appropriate  
70 Official Form, and, if the current monthly income exceeds the  
71 median family income for the applicable state and household  
72 size, the information, including calculations, required by  
73 § 707(b), prepared as prescribed by the appropriate Official  
74 Form.

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

78 (6) A debtor in a chapter 13 case shall file a  
79 statement of current monthly income, prepared as prescribed  
80 by the appropriate Official Form, and, if the current monthly  
81 income exceeds the median family income for the applicable  
82 state and household size, a calculation of disposable income  
83 made in accordance with § 1325(b)(3), prepared as prescribed  
84 by the appropriate Official Form.

85                   (7) An individual debtor in a chapter 7 or chapter  
86                   13 case shall file a statement of completion of a course  
87                   concerning personal financial management, prepared as  
88                   prescribed by the appropriate Official Form. An individual  
89                   debtor shall file the statement in a chapter 11 case in which  
90                   § 1141(d)(3) applies.

91                   (8) If an individual debtor in a chapter 11, 12, or  
92                   13 case has claimed an exemption under § 522(b)(3)(A) in  
93                   property of the kind described in § 522(p)(1) with a value in  
94                   excess of the amount set out in § 522(q)(1), the debtor shall  
95                   file a statement as to whether there is any proceeding pending  
96                   in which the debtor may be found guilty of a felony of a kind  
97                   described in § 522(q)(1)(A) or found liable for a debt of the  
98                   kind described in § 522(q)(1)(B).

99                   (c) TIME LIMITS. In a voluntary case, the schedules,  
100                   and statements, and other documents required by subdivision

12 FEDERAL RULES OF BANKRUPTCY PROCEDURE

101 ~~(b)(1), (4), (5), and (6) other than the statement of intention;~~  
102 shall be filed with the petition or within 15 days thereafter,  
103 except as otherwise provided in subdivisions (d), (e), (f), and  
104 (h) of this rule. In an involuntary case, the list in subdivision  
105 (a)(2), and the schedules, ~~and~~ statements, ~~and other~~  
106 ~~documents required by subdivision (b)(1) other than the~~  
107 ~~statement of intention;~~ shall be filed by the debtor within 15  
108 days of the entry of the order for relief. In a voluntary case,  
109 the documents required by paragraphs (A), (C), and (D) of  
110 subdivision (b)(3) shall be filed with the petition. Unless the  
111 court orders otherwise, a debtor who has filed a statement  
112 under subdivision (b)(3)(B), shall file the documents required  
113 by subdivision (b)(3)(A) within 15 days of the order for relief.  
114 In a chapter 7 case, the debtor shall file the statement required  
115 by subdivision (b)(7) within 45 days after the first date set for  
116 the meeting of creditors under § 341 of the Code, and in a

117 chapter 11 or 13 case no later than the date when the last  
118 payment was made by the debtor as required by the plan or  
119 the filing of a motion for a discharge under § 1141(d)(5)(B)  
120 or § 1328(b) of the Code. The court may, at any time and in  
121 its discretion, enlarge the time to file the statement required  
122 by subdivision (b)(7). The debtor shall file the statement  
123 required by subdivision (b)(8) no earlier than the date of the  
124 last payment made under the plan or the date of the filing of  
125 a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or  
126 1328(b) of the Code. Lists, schedules, and statements, and  
127 other documents filed prior to the conversion of a case to  
128 another chapter shall be deemed filed in the converted case  
129 unless the court directs otherwise. Except as provided in  
130 § 1116(3), any ~~Any extension of time for the filing of the to~~  
131 file schedules, and statements, and other documents required  
132 under this rule may be granted only on motion for cause

14 FEDERAL RULES OF BANKRUPTCY PROCEDURE

133 shown and on notice to the United States trustee, ~~and to~~ any  
134 committee elected under § 705 or appointed under § 1102 of  
135 the Code, trustee, examiner, or other party as the court may  
136 direct. Notice of an extension shall be given to the United  
137 States trustee and to any committee, trustee, or other party as  
138 the court may direct.

139

\* \* \* \* \*

**COMMITTEE NOTE**

The title of this rule is expanded to refer to “documents” in conformity with the 2005 amendments to § 521 and related provisions of the Bankruptcy Code that include a wider range of documentary requirements.

Subdivision (a) is amended to require that any foreign representative filing a petition for recognition to commence a case under chapter 15, which was added to the Code in 2005, file a list of entities with whom the debtor is engaged in litigation in the United States. The foreign representative filing the petition for recognition must also list any entities against whom provisional relief is being sought as well as all persons or bodies authorized to administer foreign proceedings of the debtor. This should ensure that entities most interested in the case, or their representatives, will receive notice of the petition under Rule 2002(q).



Subdivision (a)(4) is amended to require the foreign representative who files a petition for recognition under chapter 15 to file the documents described in § 1515 of the Code as well as a corporate ownership statement. The subdivision is also amended to identify the foreign representative in language that more closely follows the text of the Code. Former subdivision (a)(4) is renumbered as subdivision (a)(5) and stylistic changes were made to the subdivision.

Subdivision (b)(1) addresses schedules, statements, and other documents that the debtor must file unless the court orders otherwise and other than in a case under chapter 9. This subdivision is amended to include documentary requirements added by the 2005 amendments to § 521 that apply to the same group of debtors and have the same time limits as the existing requirements of (b)(1). Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, the payment advices should be redacted before they are filed.

Subdivision (b)(2) is amended to conform to the renumbering of the subsections of § 521.

Subdivisions (b)(3) through (b)(8) are new and implement the 2005 amendments to the Code. Subdivision (b)(3) provides for the filing of a document relating to the credit counseling requirement provided by the 2005 amendments to § 109 in the context of an Official Form that warns the debtor of the consequences of failing to comply with the credit counseling requirement.

Subdivision (b)(4) addresses the filing of information about current monthly income, as defined in § 101, for certain chapter 7

debtors and, if required, additional calculations of expenses required by the 2005 amendments to § 707(b).

Subdivision (b)(5) addresses the filing of information about current monthly income, as defined in § 101, for individual chapter 11 debtors. The 2005 amendments to § 1129(a)(15) condition plan confirmation for individual debtors on the commitment of disposable income, as defined in § 1325(b)(2), which is based on current monthly income.

Subdivision (b)(6) addresses the filing of information about current monthly income, as defined in § 101, for chapter 13 debtors and, if required, additional calculations of expenses. These changes are necessary because the 2005 amendments to § 1325 require that the determination of disposable income begin with current monthly income.

Subdivision (b)(7) reflects the 2005 amendments to §§ 727 and 1328 of the Code that condition the receipt of a discharge on the completion of a personal financial management course, with certain exceptions. Certain individual chapter 11 debtors may also be required to complete a personal financial management course under § 727(a)(11) as incorporated by § 1141(d)(3)(C). To evidence compliance with that requirement, the subdivision requires the debtor to file the appropriate Official Form certifying that the debtor has completed the personal financial management course.

Subdivision (b)(8) requires an individual debtor in a case under chapter 11, 12, or 13 to file a statement that there are no reasonable grounds to believe that the restrictions on a homestead exemption as set out in § 522(q) of the Code are applicable. Sections

1141(d)(5)(C), 1228(f), and 1328(h) each provide that the court shall not enter a discharge order unless it finds that there is no reasonable cause to believe that § 522(q) applies. Requiring the debtor to submit a statement to that effect in cases under chapters 11, 12, and 13 in which an exemption is claimed in excess of the amount allowed under § 522(q)(1) provides the court with a basis to conclude, in the absence of any contrary information, that § 522(q) does not apply. Creditors receive notice under Rule 2002(f)(11) of the time to request postponement of the entry of the discharge to permit an opportunity to challenge the debtor's assertions in the Rule 1007(b)(8) statement in appropriate cases.

Subdivision (c) is amended to include time limits for the filing requirements added to subdivision (b) due to the 2005 amendments to the Code, and to make conforming amendments. Separate time limits are provided for the documentation of credit counseling and for the statement of the completion of the financial management course. While most documents relating to credit counseling must be filed with the voluntary petition, the credit counseling certificate and debt repayment plan can be filed within 15 days of the filing of a voluntary petition if the debtor files a statement under subdivision (b)(3)(B) with the petition. Sections 727(a)(11), 1141(d)(3), and 1328(g) of the Code require individual debtors to complete a personal financial management course prior to the entry of a discharge. The amendment allows the court to enlarge the deadline for the debtor to file the statement of completion. Because no party is harmed by the enlargement, no specific restriction is placed on the court's discretion to enlarge the deadline, even after its expiration.

Subdivision (c) of the rule is also amended to recognize the limitation on the extension of time to file schedules and statements

when the debtor is a small business debtor. Section 1116(3), added to the Code in 2005, establishes a specific standard for courts to apply in the event that the debtor in possession or the trustee seeks an extension for filing these forms for a period beyond 30 days after the order for relief.

---

Changes Made After Publication:

Subdivision (a)(4) was amended to insert the requirement that the foreign representative who files the chapter 15 petition must file the corporate ownership statement. Subdivision (b)(4) was amended to provide that all individual debtors rather than just those whose debts are primarily consumer debts must file the statement of current monthly income. Subdivisions (b)(7) and (c) were amended to make the obligation to file a statement of the completion of a personal financial management course applicable to certain individual chapter 11 debtors as well as to individual debtors in chapters 7 and 13. Subdivision (c) is also amended to provide the court with broad discretion to enlarge the time to file the statement of completion of a personal financial management course. The Committee Note was amended to explain these changes.

**Rule 1009. Amendments of Voluntary Petitions, Lists,  
Schedules and Statements**

1

\* \* \* \* \*

2 (b) STATEMENT OF INTENTION. The statement of  
3 intention may be amended by the debtor at any time before  
4 the expiration of the period provided in § ~~521(a)~~ 521(2)(B) of  
5 the Code. The debtor shall give notice of the amendment to  
6 the trustee and to any entity affected thereby.

7 \* \* \* \* \*

**COMMITTEE NOTE**

Subdivision (b) is amended to conform to the 2005 amendments to § 521 of the Code.

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Changes Made After Publication:

No changes were made after publication.

**Rule 1010. Service of Involuntary Petition and Summons;  
Petition ~~Commencing Ancillary Case~~ For Recognition of  
a Foreign Nonmain Proceeding**

1 (a) SERVICE OF INVOLUNTARY PETITION AND  
2 SUMMONS; SERVICE OF PETITION FOR

3 RECOGNITION OF FOREIGN NONMAIN PROCEEDING.

4 On the filing of an involuntary petition or a petition  
5 ~~commencing a case ancillary to~~ for recognition of a foreign  
6 nonmain proceeding, the clerk shall forthwith issue a  
7 summons for service. When an involuntary petition is filed,  
8 service shall be made on the debtor. When a petition  
9 ~~commencing an ancillary case~~ for recognition of a foreign  
10 nonmain proceeding is filed, service shall be made on the  
11 ~~parties against whom relief is sought pursuant to § 304(b)~~  
12 debtor, any entity against whom provisional relief is sought  
13 under § 1519 of the Code, and on any other ~~parties~~ party as  
14 the court may direct. The summons shall be served with a  
15 copy of the petition in the manner provided for service of a  
16 summons and complaint by Rule 7004(a) or (b). If service  
17 cannot be so made, the court may order that the summons and  
18 petition be served by mailing copies to the party's last known

19 address, and by at least one publication in a manner and form  
 20 directed by the court. The summons and petition may be  
 21 served on the party anywhere. Rule 7004(e) and Rule 4(l)  
 22 F.R.Civ.P. apply when service is made or attempted under  
 23 this rule.

24 (b) CORPORATE OWNERSHIP STATEMENT.

25 Each petitioner that is a corporation shall file with the  
 26 involuntary petition a corporate ownership statement  
 27 containing the information described in Rule 7007.1.

**COMMITTEE NOTE**

This rule is amended to implement the 2005 amendments to the Code, which repealed § 304 and replaced it with chapter 15 governing ancillary and other cross-border cases. Under chapter 15, a foreign representative commences a case by filing a petition for recognition of a pending foreign nonmain proceeding. The amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. Until the court enters a recognition order under § 1517, no stay is in effect unless the court enters some form of provisional relief under § 1519. Thus, only those entities against whom specific provisional relief is sought need to be served. The

court may, however, direct that service be made on additional entities as appropriate.

This rule does not apply to a petition for recognition of a foreign main proceeding.

The rule is also amended by renumbering the prior rule as subdivision (a) and adding a new subdivision (b) requiring any corporate creditor that files or joins an involuntary petition to file a corporate ownership statement.

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Changes Made After Publication:

No changes were made after publication.

**Rule 1011. Responsive Pleading or Motion in Involuntary and Ancillary Cross-Border Cases**

- 1           (a) WHO MAY CONTEST PETITION. The debtor  
2           named in an involuntary petition, or a party in interest to a  
3           petition ~~commencing a case ancillary to a~~ for recognition of  
4           a foreign proceeding, may contest the petition. In the case of  
5           a petition against a partnership under Rule 1004, a



6 nonpetitioning general partner, or a person who is alleged to  
7 be a general partner but denies the allegation, may contest the  
8 petition.

9 \* \* \* \* \*

10 (f) CORPORATE OWNERSHIP STATEMENT. If  
11 the entity responding to the involuntary petition or the petition  
12 for recognition of a foreign proceeding is a corporation, the  
13 entity shall file with its first appearance, pleading, motion,  
14 response, or other request addressed to the court a corporate  
15 ownership statement containing the information described in  
16 Rule 7007.1.

**COMMITTEE NOTE**

The rule is amended to reflect the 2005 amendments to the Code, which repealed § 304 and added chapter 15. Section 304 covered cases ancillary to foreign proceedings, while chapter 15 governs ancillary and other cross-border cases and introduces the concept of a petition for recognition of a foreign proceeding.

The rule is also amended in tandem with the amendment to Rule 1010 to require the parties responding to an involuntary petition and a petition for recognition of a foreign proceeding to file corporate ownership statements to assist the court in determining whether recusal is necessary.

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Changes Made After Publication:

No changes were made after publication.

**Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court**

1

\*\*\*\*\*

2

(b) CASES INVOLVING TWO OR MORE

3

RELATED DEBTORS. If a joint petition or two or more

4

petitions are pending in the same court by or against (1) a

5

husband and wife, or (2) a partnership and one or more of its

6

general partners, or (3) two or more general partners, or (4) a

7

debtor and an affiliate, the court may order a joint

8

administration of the estates. Prior to entering an order the

9 court shall give consideration to protecting creditors of  
10 different estates against potential conflicts of interest. An  
11 order directing joint administration of individual cases of a  
12 husband and wife shall, if one spouse has elected the  
13 exemptions under § 522(b) ~~(1)~~ (2) of the Code and the other  
14 has elected the exemptions under § 522 (b)~~(2)~~ (3), fix a  
15 reasonable time within which either may amend the election  
16 so that both shall have elected the same exemptions. The  
17 order shall notify the debtors that unless they elect the same  
18 exemptions within the time fixed by the court, they will be  
19 deemed to have elected the exemptions provided by  
20 § 522(b)~~(1)~~ (2).

21

\* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to conform to the change in the numbering of § 522(b) of the Code that was made as a part of the 2005 amendments. Former subsections (b)(1) and (b)(2) of § 522

were renumbered as subsections (b)(2) and (b)(3), respectively. The rule is amended to make the parallel change.

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Changes Made After Publication:

No changes were made after publication.

**Rule 1017. Dismissal or Conversion of Case; Suspension**

1

\* \* \* \* \*

2

(e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S

3

CHAPTER 7 CASE, OR CONVERSION TO A CASE

4

UNDER CHAPTER 11 or 13, FOR SUBSTANTIAL

5

ABUSE. The court may dismiss or, with the debtor's

6

consent, convert an individual debtor's case for ~~substantial~~

7

abuse under § 707(b) only on motion ~~by the United States~~

8

~~trustee or on the court's own motion~~ and after a hearing on

9

notice to the debtor, the trustee, the United States trustee, and

10

any other ~~entities~~ entity as the court directs.

11 (1) Except as otherwise provided in § 704(b)(2), a  
 12 ~~A~~ motion to dismiss a case for ~~substantial~~ abuse under  
 13 § 707(b) or (c) may be filed ~~by the United States trustee~~ only  
 14 within 60 days after the first date set for the meeting of  
 15 creditors under § 341(a), unless, on request filed ~~by the~~  
 16 ~~United States trustee~~ before the time has expired, the court for  
 17 cause extends the time for filing the motion to dismiss. The  
 18 ~~United States trustee~~ party filing the motion shall set forth in  
 19 the motion all matters to be considered ~~submitted to the court~~  
 20 ~~for its consideration~~ at the hearing. In addition, a motion to  
 21 dismiss under § 707(b)(1) and (3) shall state with particularity  
 22 the circumstances alleged to constitute abuse.

23 \* \* \* \* \*

**COMMITTEE NOTE**

Subdivision (e) is amended to implement the 2005 amendments to § 707 of the Code. These statutory amendments permit conversion of a chapter 7 case to a case under chapter 11 or

13, change the basis for dismissal or conversion from “substantial abuse” to “abuse,” authorize parties other than the United States trustee to bring motions under § 707(b) under certain circumstances, and add § 707(c) to create an explicit ground for dismissal based on the request of a victim of a crime of violence or drug trafficking. The conforming amendments to subdivision (e) preserve the time limits already in place for § 707(b) motions, except to the extent that § 704(b)(2) sets the deadline for the United States trustee to act. In contrast to the grounds for a motion to dismiss under § 707(b)(2), which are quite specific, the grounds under § 707(b)(1) and (3) are very general. Therefore, to enable the debtor to respond, subdivision (e) requires that motions to dismiss under § 707(b)(1) and (3) state with particularity the circumstances alleged to constitute abuse.

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Changes Made After Publication:

No changes were made after publication.

**Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer’s Debt Adjustment Case, or Chapter 13 Individual’s Debt Adjustment Case to a Chapter 7 Liquidation Case**

1

\* \* \* \* \*

2

(2) *New Filing Periods.* A new time period for

3

filing ~~claims~~, a motion under § 707(b) or (c), a claim, a

4 complaint objecting to discharge, or a complaint to obtain a  
5 determination of dischargeability of any debt shall commence  
6 under ~~pursuant to~~ Rules 1017, 3002, 4004, or 4007, provided  
7 ~~that~~ but a new time period shall not commence if a chapter 7  
8 case had been converted to a chapter 11, 12, or 13 case and  
9 thereafter reconverted to a chapter 7 case and the time for  
10 filing ~~claims, a motion under § 707(b) or (c), a claim, a~~  
11 complaint objecting to discharge, or a complaint to obtain a  
12 determination of the dischargeability of any debt, or any  
13 extension thereof, expired in the original chapter 7 case.

14 \* \* \* \* \*

**COMMITTEE NOTE**

Subdivision (2) is amended to include a new filing period for motions under § 707(b) and (c) of the Code when a case is converted to chapter 7. The establishment of a deadline for filing such motions is not intended to express a position as to whether such motions are permitted under the Code.

---

Changes Made After Publication:

The Committee Note was amended by adding the second sentence to the Note stating explicitly that the rule was not intended to take a position on whether motions to dismiss a case under § 707(b) and (c) are proper in a case that is converted from another chapter.

**Rule 1020. ~~Election to be Considered a Small Business in a Chapter 11 Reorganization Case~~ Small Business Chapter 11 Reorganization Case**

1           ~~In a chapter 11 reorganization case, a debtor that is a~~  
2           ~~small business may elect to be considered a small business by~~  
3           ~~filing a written statement of election not later than 60 days~~  
4           ~~after the date of the order for relief.~~

5           (a) SMALL BUSINESS DEBTOR DESIGNATION. In  
6           a voluntary chapter 11 case, the debtor shall state in the  
7           petition whether the debtor is a small business debtor. In an  
8           involuntary chapter 11 case, the debtor shall file within 15  
9           days after entry of the order for relief a statement as to



10 whether the debtor is a small business debtor. Except as  
11 provided in subdivision (c), the status of the case as a small  
12 business case shall be in accordance with the debtor's  
13 statement under this subdivision, unless and until the court  
14 enters an order finding that the debtor's statement is incorrect.

15 (b) OBJECTING TO DESIGNATION. Except as  
16 provided in subdivision (c), the United States trustee or a  
17 party in interest may file an objection to the debtor's  
18 statement under subdivision (a) no later than 30 days after the  
19 conclusion of the meeting of creditors held under § 341(a) of  
20 the Code, or within 30 days after any amendment to the  
21 statement, whichever is later.

22 (c) APPOINTMENT OF COMMITTEE OF  
23 UNSECURED CREDITORS. If a committee of unsecured  
24 creditors has been appointed under § 1102(a)(1), the case  
25 shall proceed as a small business case only if, and from the

32 FEDERAL RULES OF BANKRUPTCY PROCEDURE

26 time when, the court enters an order determining that the  
27 committee has not been sufficiently active and representative  
28 to provide effective oversight of the debtor and that the debtor  
29 satisfies all the other requirements for being a small business.  
30 A request for a determination under this subdivision may be  
31 filed by the United States trustee or a party in interest only  
32 within a reasonable time after the failure of the committee to  
33 be sufficiently active and representative. The debtor may file  
34 a request for a determination at any time as to whether the  
35 committee has been sufficiently active and representative.

36 (d) PROCEDURE FOR OBJECTION OR  
37 DETERMINATION. Any objection or request for a  
38 determination under this rule shall be governed by Rule 9014  
39 and served on: the debtor; the debtor's attorney; the United  
40 States trustee; the trustee; any committee appointed under  
41 § 1102 or its authorized agent, or, if no committee of

42 unsecured creditors has been appointed under § 1102, the  
43 creditors included on the list filed under Rule 1007(d); and  
44 any other entity as the court directs.

#### COMMITTEE NOTE

Under the Code, as amended in 2005, there are no longer any provisions permitting or requiring a small business debtor to elect to be treated as a small business. Therefore, the election provisions in the rule are eliminated.

The 2005 amendments to the Code include several provisions relating to small business cases under chapter 11. Section 101 includes definitions of “small business debtor” and “small business case.” The purpose of the new language in this rule is to provide a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor, and to provide procedures for resolving disputes regarding the proper characterization of the debtor. Because it is important to resolve such disputes early in the case, a time limit for objecting to the debtor’s self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule.

An important factor in determining whether the debtor is a small business debtor is whether the United States trustee has appointed a committee of unsecured creditors under § 1102, and whether such a committee is sufficiently active and representative. Subdivision (c), relating to the appointment and activity of a

committee of unsecured creditors, is designed to be consistent with the Code's definition of "small business debtor."

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Changes Made After Publication:

No changes were made after publication.

**Rule 1021. Health Care Business Case**

- 1           (a) HEALTH CARE BUSINESS DESIGNATION.  
2           Unless the court orders otherwise, if a petition in a case under  
3           chapter 7, chapter 9, or chapter 11 states that the debtor is a  
4           health care business, the case shall proceed as a case in which  
5           the debtor is a health care business.
- 6           (b) MOTION. The United States trustee or a party in  
7           interest may file a motion to determine whether the debtor is  
8           a health care business. The motion shall be transmitted to the  
9           United States trustee and served on: the debtor; the trustee;  
10          any committee elected under § 705 or appointed under § 1102

11 of the Code or its authorized agent, or, if the case is a chapter  
12 9 municipality case or a chapter 11 reorganization case and no  
13 committee of unsecured creditors has been appointed under  
14 § 1102, the creditors included on the list filed under Rule  
15 1007(d); and any other entity as the court directs. The motion  
16 shall be governed by Rule 9014.

#### COMMITTEE NOTE

Section 101(27A) of the Code, added by the 2005 amendments, defines a health care business. This rule provides procedures for designating the debtor as a health care business. The debtor in a voluntary case, or petitioning creditors in an involuntary case, make that designation by checking the appropriate box on the petition. The rule also provides procedures for resolving disputes regarding the status of the debtor as a health care business.

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Changes Made After Publication:

No changes were made after publication.

**Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other**



15 make a final determination whether the plan provides  
16 adequate information so that a separate disclosure statement  
17 is not necessary; and (2) ~~the time fixed~~ for filing objections  
18 and the hearing to consider confirmation of a chapter 9,  
19 chapter 11, or chapter 13 plan.

20 (c) CONTENT OF NOTICE.

21 (1) *Proposed Use, Sale, or Lease of Property.*

22 Subject to Rule 6004, the notice of a proposed use, sale, or  
23 lease of property required by subdivision (a)(2) of this rule  
24 shall include the time and place of any public sale, the terms  
25 and conditions of any private sale and the time fixed for filing  
26 objections. The notice of a proposed use, sale, or lease of  
27 property, including real estate, is sufficient if it generally  
28 describes the property. The notice of a proposed sale or lease  
29 of personally identifiable information under § 363(b)(1) of the

38 FEDERAL RULES OF BANKRUPTCY PROCEDURE

30 Code shall state whether the sale is consistent with any policy  
31 prohibiting the transfer of the information.

32 \* \* \* \* \*

33 (f) OTHER NOTICES. Except as provided in subdivision  
34 (l) of this rule, the clerk, or some other person as the court  
35 may direct, shall give the debtor, all creditors, and indenture  
36 trustees notice by mail of:

37 (1) the order for relief;

38 (2) the dismissal or the conversion of the case to  
39 another chapter, or the suspension of proceedings under  
40 § 305;

41 (3) the time allowed for filing claims pursuant to Rule  
42 3002;

43 (4) the time fixed for filing a complaint objecting to  
44 the debtor's discharge pursuant to § 727 of the Code as  
45 provided in Rule 4004;



46 (5) the time fixed for filing a complaint to determine  
47 the dischargeability of a debt pursuant to § 523 of the Code as  
48 provided in Rule 4007;

49 (6) the waiver, denial, or revocation of a discharge as  
50 provided in Rule 4006;

51 (7) entry of an order confirming a chapter 9, 11, or 12  
52 plan; and

53 (8) a summary of the trustee's final report in a chapter  
54 7 case if the net proceeds realized exceed \$1,500;

55 (9) a notice under Rule 5008 regarding the  
56 presumption of abuse;

57 (10) a statement under § 704(b)(1) as to whether the  
58 debtor's case would be presumed to be an abuse under  
59 § 707(b); and

60 (11) the time to request a delay in the entry of the  
61 discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h).

40 FEDERAL RULES OF BANKRUPTCY PROCEDURE

62 Notice of the time fixed for accepting or rejecting a plan  
63 pursuant to Rule 3017(c) shall be given in accordance with  
64 Rule 3017(d).

65 (g) ADDRESSING NOTICES.

66 \* \* \* \* \*

67 (2) Except as provided in § 342(f) of the Code, if a  
68 creditor or indenture trustee has not filed a request  
69 designating a mailing address under Rule 2002(g)(1) or Rule  
70 5003(e), the notices shall be mailed to the address shown on  
71 the list of creditors or schedule of liabilities, whichever is  
72 filed later. If an equity security holder has not filed a request  
73 designating a mailing address under Rule 2002(g)(1) or Rule  
74 5003(e), the notices shall be mailed to the address shown on  
75 the list of equity security holders.

76 \* \* \* \* \*



42 FEDERAL RULES OF BANKRUPTCY PROCEDURE

93 all applications for compensation or reimbursement of  
94 expenses. Notices to the United States trustee shall be  
95 transmitted within the time prescribed in subdivision (a) or  
96 (b) of this rule. The United States trustee shall also receive  
97 notice of any other matter if such notice is requested by the  
98 United States trustee or ordered by the court. Nothing in  
99 these rules requires the clerk or any other person to transmit  
100 to the United States trustee any notice, schedule, report,  
101 application or other document in a case under the Securities  
102 Investor Protection Act, 15 U.S.C. § 78aaa *et. seq.*

103 \* \* \* \* \*

104 (p) NOTICE TO A CREDITOR WITH A FOREIGN  
105 ADDRESS.

106 (1) If, at the request of the United States trustee or a  
107 party in interest, or on its own initiative, the court finds that  
108 a notice mailed within the time prescribed by these rules

109 would not be sufficient to give a creditor with a foreign  
110 address to which notices under these rules are mailed  
111 reasonable notice under the circumstances, the court may  
112 order that the notice be supplemented with notice by other  
113 means or that the time prescribed for the notice by mail be  
114 enlarged.

115 (2) Unless the court for cause orders otherwise, a  
116 creditor with a foreign address to which notices under this  
117 rule are mailed shall be given at least 30 days' notice of the  
118 time fixed for filing a proof of claim under Rule 3002(c) or  
119 Rule 3003(c).

120 (3) Unless the court for cause orders otherwise, the  
121 mailing address of a creditor with a foreign address shall be  
122 determined under Rule 2002(g).

44 FEDERAL RULES OF BANKRUPTCY PROCEDURE

123 (q) NOTICE OF PETITION FOR RECOGNITION OF  
124 FOREIGN PROCEEDING AND OF COURT'S INTENTION  
125 TO COMMUNICATE WITH FOREIGN COURTS AND  
126 FOREIGN REPRESENTATIVES.

127 (1) Notice of Petition for Recognition. The clerk, or  
128 some other person as the court may direct, shall forthwith  
129 give the debtor, all persons or bodies authorized to administer  
130 foreign proceedings of the debtor, all entities against whom  
131 provisional relief is being sought under § 1519 of the Code,  
132 all parties to litigation pending in the United States in which  
133 the debtor is a party at the time of the filing of the petition,  
134 and such other entities as the court may direct, at least 20  
135 days' notice by mail of the hearing on the petition for  
136 recognition of a foreign proceeding. The notice shall state  
137 whether the petition seeks recognition as a foreign main  
138 proceeding or foreign nonmain proceeding.

139                    (2) Notice of Court's Intention to Communicate with  
 140                    Foreign Courts and Foreign Representatives. The clerk, or  
 141                    some other person as the court may direct, shall give the  
 142                    debtor, all persons or bodies authorized to administer foreign  
 143                    proceedings of the debtor, all entities against whom  
 144                    provisional relief is being sought under § 1519 of the Code,  
 145                    all parties to litigation pending in the United States in which  
 146                    the debtor is a party at the time of the filing of the petition,  
 147                    and such other entities as the court may direct, notice by mail  
 148                    of the court's intention to communicate with a foreign court  
                          or foreign representative.

**COMMITTEE NOTE**

Subdivision (b) is amended to provide for 25 days' notice of the time for the court to make a final determination whether the plan in a small business case can serve as a disclosure statement. Conditional approval of a disclosure statement in a small business case is governed by Rule 3017.1 and does not require 25 days' notice. The court may consider this matter in a hearing combined with the confirmation hearing in a small business case.

Because of the requirements of Rule 6004(g), subdivision (c)(1) is amended to require that a trustee leasing or selling personally identifiable information under § 363(b)(1)(A) or (B) of the Code, as amended in 2005, include in the notice of the lease or sale transaction a statement as to whether the lease or sale is consistent with a policy prohibiting the transfer of the information.

Subdivisions (f)(9) and (10) are new. They reflect the 2005 amendments to §§ 342(d) and 704(b) of the Code. Section 342(d) requires the clerk to give notice to creditors shortly after the commencement of the case as to whether a presumption of abuse exists. Subdivision (f)(9) adds this notice to the list of notices that the clerk must give. Subdivision (f)(10) implements the amendment to § 704(b), which requires the court to provide a copy to all creditors of a statement by the United States trustee or bankruptcy administrator as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

Subdivision (f)(11) is also added to provide notice to creditors of the debtor's filing of a statement in a chapter 11, 12, or 13 case that there is no reasonable cause to believe that § 522(q) applies in the case. This allows a creditor who disputes that assertion to request a delay of the entry of the discharge in the case.

Subdivision (g)(2) of the rule is amended because the 2005 amendments to § 342(f) of the Code permit creditors in chapter 7 and 13 individual debtor cases to file a notice with any bankruptcy court of the address to which the creditor wishes all notices to be sent. The amendment to Rule 2002(g)(2) therefore only limits application of the subdivision when a creditor files a notice under § 342(f).



New subdivision (g)(5) implements § 342(g)(1) which was added to the Code in 2005. Section 342(g)(1) allows a creditor to treat a notice as not having been brought to the creditor's attention, and so potentially ineffective, until it is received by a person or organizational subdivision that the creditor has designated to receive notices under the Bankruptcy Code. Under that section, the creditor must have established reasonable procedures for such notices to be delivered to the designated person or subdivision. The rule provides that, in order to challenge a notice under § 342(g)(1), a creditor must have filed the name and address of the designated notice recipient, as well as a description of the procedures for directing notices to that recipient, prior to the time that the challenged notice was issued. The filing required by the rule may be made as part of a creditor's filing under § 342(f), which allows a creditor to file a notice of the address to be used by all bankruptcy courts or by particular bankruptcy courts to provide notice to the creditor in cases under chapters 7 and 13. Filing the name and address of the designated notice recipient and the procedures for directing notices to that recipient will reduce uncertainty as to the proper party for receiving notice and limit factual disputes as to whether a notice recipient has been designated and as to the nature of procedures adopted to direct notices to the recipient.

Subdivision (k) is amended to add notices given under subdivision (q) to the list of notices which must be served on the United States trustee.

Section 1514(d) of the Code, added by the 2005 amendments, requires that such additional time as is reasonable under the circumstances be given to creditors with foreign addresses with respect to notices and the filing of a proof of claim. Thus, subdivision (p)(1) is added to this rule to give the court flexibility to

direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses. If cause exists, such as likely delays in the delivery of mailed notices in particular locations, the court may order that notice also be given by email, facsimile, or private courier. Alternatively, the court may enlarge the notice period for a creditor with a foreign address. It is expected that in most situations involving foreign creditors, fairness will not require any additional notice or extension of the notice period. This rule recognizes that the court has discretion to establish procedures to determine, on its own initiative, whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest.

Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days' notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court may also shorten the additional notice time if circumstances so warrant. For example, if the court in a chapter 11 case determines that supplementing the notice to a foreign creditor with notice by electronic means, such as email or facsimile, would give the creditor reasonable notice, the court may order that the creditor be given only 20 days' notice in accordance with Rule 2002(a)(7).

Subdivision (p)(3) is added to provide that the court may, for cause, override a creditor's designation of a foreign address under Rule 2002(g). For example, if a party in interest believes that a

creditor has wrongfully designated a foreign address to obtain additional time when it has a significant presence in the United States, the party can ask the court to order that notices to that creditor be sent to an address other than the one designated by the foreign creditor.

Subdivision (q) is added to require that notice of the hearing on the petition for recognition of a foreign proceeding be given to the debtor, all administrators in foreign proceedings of the debtor, entities against whom provisional relief is sought, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice of the court's intention to communicate with a foreign court or foreign representative.

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Changes Made After Publication:

Subdivision (g)(2) was amended to provide that the designated address of a governmental unit under Rule 5003(e) establishes an exception to the rule that a creditor's address is to be taken from the debtor's schedules. The fifth and sixth paragraphs of the Committee Note were amended to explain that change.

Subdivision (p)(3) was added to the rule to provide that the court may override a creditor's designation of a foreign mailing

address under Rule 2002(g). This will permit a party in interest to seek court relief if a creditor has improperly designated a foreign address.

Subdivision (q)(1) and (2) were amended by adopting language from § 101(24) to identify foreign representatives as “all persons or bodies authorized to administer foreign proceedings of the debtor” rather than as “all administrators in foreign proceedings of the debtor.” References to Rule 5012 in subdivision (q)(2) and in the Committee Note were deleted.

**Rule 2003. Meeting of Creditors or Equity Security Holders**

1           (a) DATE AND PLACE. Except as otherwise provided  
2           in § 341(e) of the Code, in ~~in~~ a chapter 7 liquidation or a  
3           chapter 11 reorganization case, the United States trustee shall  
4           call a meeting of creditors to be held no fewer than 20 and no  
5           more than 40 days after the order for relief. In a chapter 12  
6           family farmer debt adjustment case, the United States trustee  
7           shall call a meeting of creditors to be held no fewer than 20  
8           and no more than 35 days after the order for relief. In a

9 chapter 13 individual's debt adjustment case, the United  
10 States trustee shall call a meeting of creditors to be held no  
11 fewer than 20 and no more than 50 days after the order for  
12 relief. If there is an appeal from or a motion to vacate the  
13 order for relief, or if there is a motion to dismiss the case, the  
14 United States trustee may set a later date for the meeting. The  
15 meeting may be held at a regular place for holding court or at  
16 any other place designated by the United States trustee within  
17 the district convenient for the parties in interest. If the United  
18 States trustee designates a place for the meeting which is not  
19 regularly staffed by the United States trustee or an assistant  
20 who may preside at the meeting, the meeting may be held not  
21 more than 60 days after the order for relief.

22 \* \* \* \* \*

**COMMITTEE NOTE**

If the debtor has solicited acceptances to a plan before commencement of the case, § 341(e), which was added to the Code by the 2005 amendments, authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened. The rule is amended to recognize that a meeting of creditors might not be held in those cases.

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Changes Made After Publication:

No changes were made after publication.

**Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case**

1

\* \* \* \* \*

2

(b) ELECTION OF TRUSTEE.

3

\* \* \* \* \*

4

(3) *Report of Election and Resolution of Disputes.*

5

(A) Report of Undisputed Election. If no

6

dispute arises out of the election is not disputed, the United

7

States trustee shall promptly file a report ~~of~~ certifying the

Sec. II-A, Page 52

8 election, including the name and address of the person elected  
9 and a statement that the election is undisputed. The report  
10 shall be accompanied by a verified statement of the person  
11 elected setting forth that person's connections with the debtor,  
12 creditors, any other party in interest, their respective attorneys  
13 and accountants, the United States trustee, or any person  
14 employed in the office of the United States trustee. The  
15 United States trustee shall file with the report an application  
16 for approval of the appointment in accordance with  
17 subdivision (c) of this rule. The report constitutes  
18 appointment of the elected person to serve as trustee, subject  
19 to court approval, as of the date of entry of the order  
20 approving the appointment.

21 (B) Dispute Arising Out of an Disputed  
22 Election. If a dispute arises out of an the election is disputed,  
23 the United States trustee shall promptly file a report stating

54 FEDERAL RULES OF BANKRUPTCY PROCEDURE

24 that the election is disputed, informing the court of the nature  
25 of the dispute, and listing the name and address of any  
26 candidate elected under any alternative presented by the  
27 dispute. The report shall be accompanied by a verified  
28 statement by each candidate elected under each alternative  
29 presented by the dispute, setting forth the person's  
30 connections with the debtor, creditors, any other party in  
31 interest, their respective attorneys and accountants, the United  
32 States trustee, ~~and~~ or any person employed in the office of the  
33 United States trustee. Not later than the date on which the  
34 report of the disputed election is filed, the United States  
35 trustee shall mail a copy of the report and each verified  
36 statement to any party in interest that has made a request to  
37 convene a meeting under § 1104(b) or to receive a copy of the  
38 report, and to any committee appointed under § 1102 of the  
39 Code. ~~Unless a motion for the resolution of the dispute is filed~~



40 ~~not later than 10 days after the United States trustee files the~~  
41 ~~report, any person appointed by the United States trustee~~  
42 ~~under § 1104(d) and approved in accordance with subdivision~~  
43 ~~(c) of this rule shall serve as trustee. If a motion for the~~  
44 ~~resolution of the dispute is timely filed, and the court~~  
45 ~~determines the result of the election and approves the person~~  
46 ~~elected, the report will constitute appointment of the elected~~  
47 ~~person as of the date of entry of the order approving the~~  
48 ~~appointment.~~

49 (c) APPROVAL OF APPOINTMENT. An order  
50 approving the appointment of a trustee ~~elected under~~  
51 ~~§ 1104(b) or appointed under § 1104(d), or the appointment~~  
52 ~~of an examiner under § 1104(d) of the Code, shall be made on~~  
53 application of the United States trustee. The application shall  
54 state the name of the person appointed and, to the best of the  
55 applicant's knowledge, all the person's connections with the

56 FEDERAL RULES OF BANKRUPTCY PROCEDURE

56 debtor, creditors, any other parties in interest, their respective  
57 attorneys and accountants, the United States trustee, ~~and or~~  
58 persons employed in the office of the United States trustee.  
59 ~~Unless the person has been elected under § 1104(b), the~~ The  
60 application shall state the names of the parties in interest with  
61 whom the United States trustee consulted regarding the  
62 appointment. The application shall be accompanied by a  
63 verified statement of the person appointed setting forth the  
64 person's connections with the debtor, creditors, any other  
65 party in interest, their respective attorneys and accountants,  
66 the United States trustee, ~~and or~~ any person employed in the  
office of the United States trustee.

**COMMITTEE NOTE**

Under § 1104(b)(2) of the Code, as amended in 2005, if an eligible, disinterested person is elected to serve as trustee in a chapter 11 case, the United States trustee is directed to file a report certifying the election. The person elected does not have to be appointed to the position. Rather, the filing of the report certifying the election itself

constitutes the appointment. The section further provides that in the event of a dispute in the election of a trustee, the court must resolve the matter. The rule is amended to be consistent with § 1104(b)(2).

When the United States trustee files a report certifying the election of a trustee, the person elected must provide a verified statement, similar to the statement required of professional persons under Rule 2014, disclosing connections with parties in interest and certain other persons connected with the case. Although court approval of the person elected is not required, the disclosure of the person's connections will enable parties in interest to determine whether the person is disinterested.

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Changes Made After Publication:

No changes were made after publication.

**Rule 2007.2. Appointment of Patient Care Ombudsman  
in a Health Care Business Case**

- 1           (a) ORDER TO APPOINT PATIENT CARE  
2           OMBUDSMAN. In a chapter 7, chapter 9, or chapter 11 case  
3           in which the debtor is a health care business, the court shall  
4           order the appointment of a patient care ombudsman under

58 FEDERAL RULES OF BANKRUPTCY PROCEDURE

5 § 333 of the Code, unless the court, on motion of the United  
6 States trustee or a party in interest filed no later than 20 days  
7 after the commencement of the case or within another time  
8 fixed by the court, finds that the appointment of a patient care  
9 ombudsman is not necessary under the specific circumstances  
10 of the case for the protection of patients.

11 (b) MOTION FOR ORDER TO APPOINT  
12 OMBUDSMAN. If the court has found that the appointment  
13 of an ombudsman is not necessary, or has terminated the  
14 appointment, the court, on motion of the United States trustee  
15 or a party in interest, may order the appointment at a later  
16 time if it finds that the appointment has become necessary to  
17 protect patients.

18 (c) NOTICE OF APPOINTMENT. If a patient care  
19 ombudsman is appointed under § 333, the United States  
20 trustee shall promptly file a notice of the appointment,

21 including the name and address of the person appointed.  
22 Unless the person appointed is a State Long-Term Care  
23 Ombudsman, the notice shall be accompanied by a verified  
24 statement of the person appointed setting forth the person's  
25 connections with the debtor, creditors, patients, any other  
26 party in interest, their respective attorneys and accountants,  
27 the United States trustee, and any person employed in the  
28 office of the United States trustee.

29 (d) TERMINATION OF APPOINTMENT. On motion  
30 of the United States trustee or a party in interest, the court  
31 may terminate the appointment of a patient care ombudsman  
32 if the court finds that the appointment is not necessary to  
33 protect patients.

34 (e) MOTION. A motion under this rule shall be  
35 governed by Rule 9014. The motion shall be transmitted to  
36 the United States trustee and served on: the debtor; the

37 trustee; any committee elected under § 705 or appointed  
38 under § 1102 of the Code or its authorized agent, or, if the  
39 case is a chapter 9 municipality case or a chapter 11  
40 reorganization case and no committee of unsecured creditors  
41 has been appointed under § 1102, on the creditors included on  
42 the list filed under Rule 1007(d); and such other entities as the  
43 court may direct.

#### COMMITTEE NOTE

Section 333 of the Code, added by the 2005 amendments, requires the court to order the appointment of a health care ombudsman within the first 30 days of a health care business case, unless the court finds that the appointment is not necessary for the protection of patients. The rule recognizes this requirement and provides a procedure by which a party may obtain a court order finding that the appointment of a patient care ombudsman is unnecessary. In the absence of a timely motion under subdivision (a) of this rule, the court will enter an order directing the United States trustee to appoint the ombudsman.

Subdivision (b) recognizes that, despite a previous order finding that a patient care ombudsman is not necessary, circumstances of the case may change or newly discovered evidence may demonstrate the necessity of an ombudsman to protect the interests of

patients. In that event, a party may move the court for an order directing the appointment of an ombudsman.

When the appointment of a patient care ombudsman is ordered, the United States trustee is required to appoint a disinterested person to serve in that capacity. Court approval of the appointment is not required, but subdivision (c) requires the person appointed, if not a State Long-Term Care Ombudsman, to file a verified statement similar to the statement filed by professional persons under Rule 2014 so that parties in interest will have information relevant to disinterestedness. If a party believes that the person appointed is not disinterested, it may file a motion asking the court to find that the person is not eligible to serve.

Subdivision (d) permits parties in interest to move for the termination of the appointment of a patient care ombudsman. If the movant can show that there no longer is any need for the ombudsman, the court may order the termination of the appointment.

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Changes Made After Publication:

No changes were made after publication.

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

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

62 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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

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

11 (3) file the reports and summaries required by  
12 § 704(8) of the Code which shall include a statement, if  
13 payments are made to employees, of the amounts of  
14 deductions for all taxes required to be withheld or paid for  
15 and in behalf of employees and the place where these amounts  
16 are deposited;

17 (4) as soon as possible after the commencement of  
18 the case, give notice of the case to every entity known to be



19 holding money or property subject to withdrawal or order of  
20 the debtor, including every bank, savings or building and loan  
21 association, public utility company, and landlord with whom  
22 the debtor has a deposit, and to every insurance company  
23 which has issued a policy having a cash surrender value  
24 payable to the debtor, except that notice need not be given to  
25 any entity who has knowledge or has previously been notified  
26 of the case;

27 (5) in a chapter 11 reorganization case, on or before  
28 the last day of the month after each calendar quarter during  
29 which there is a duty to pay fees under 28 U.S.C.  
30 § 1930(a)(6), file and transmit to the United States trustee a  
31 statement of any disbursements made during that quarter and  
32 of any fees payable under 28 U.S.C. § 1930 (a)(6) for that  
33 quarter; and

34                   (6) in a chapter 11 small business case, unless the  
35                   court, for cause, sets another reporting interval, file and  
36                   transmit to the United States trustee for each calendar month  
37                   after the order for relief, on the appropriate Official Form, the  
38                   report required by § 308. If the order for relief is within the  
39                   first 15 days of a calendar month, a report shall be filed for  
40                   the portion of the month that follows the order for relief. If  
41                   the order for relief is after the 15<sup>th</sup> day of a calendar month,  
42                   the period for the remainder of the month shall be included in  
43                   the report for the next calendar month. Each report shall be  
44                   filed no later than 20 days after the last day of the calendar  
45                   month following the month covered by the report. The  
46                   obligation to file reports under this subparagraph terminates  
47                   on the effective date of the plan, or conversion or dismissal of  
48                   the case.

49

\* \* \* \* \*

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

56           ~~(d)~~ (e) TRANSMISSION OF REPORTS. In a chapter  
57           11 case the court may direct that copies or summaries of  
58           annual reports and copies or summaries of other reports shall  
59           be mailed to the creditors, equity security holders, and  
60           indenture trustees. The court may also direct the publication  
61           of summaries of any such reports. A copy of every report or  
62           summary mailed or published pursuant to this subdivision  
63           shall be transmitted to the United States trustee.

**COMMITTEE NOTE**

Subparagraph (a)(6) implements § 308 of the Code, added by the 2005 amendments. That section requires small business chapter 11 debtors to file periodic financial and operating reports, and the rule sets the time for filing those reports and requires the use of an Official Form for the report. The obligation to file reports under this rule does not relieve the trustee or debtor of any other obligations to provide information or documents to the United States trustee.

The rule also is amended to fix the time for the filing of notices under § 1518, added to the Code in 2005. Former subdivision (d) is renumbered as subdivision (e).

Other changes are stylistic.

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**Changes Made After Publication:**

No changes were made after publication.

**Rule 2015.1. Patient Care Ombudsman**

- 1           (a) REPORTS. A patient care ombudsman, at least 10  
2           days before making a report under § 333(b)(2) of the Code,  
3           shall give notice that the report will be made to the court,  
4           unless the court orders otherwise. The notice shall be

5 transmitted to the United States trustee, posted conspicuously  
6 at the health care facility that is the subject of the report, and  
7 served on: the debtor; the trustee; all patients; and any  
8 committee elected under § 705 or appointed under § 1102 of  
9 the Code or its authorized agent, or, if the case is a chapter 9  
10 municipality case or a chapter 11 reorganization case and no  
11 committee of unsecured creditors has been appointed under  
12 § 1102, on the creditors included on the list filed under Rule  
13 1007(d); and such other entities as the court may direct. The  
14 notice shall state the date and time when the report will be  
15 made, the manner in which the report will be made, and, if the  
16 report is in writing, the name, address, telephone number,  
17 email address, and website, if any, of the person from whom  
18 a copy of the report may be obtained at the debtor's expense.

19 (b) AUTHORIZATION TO REVIEW CONFIDENTIAL  
20 PATIENT RECORDS. A motion by a patient care

21 ombudsman under § 333(c) to review confidential patient  
22 records shall be governed by Rule 9014, served on the patient  
23 and any family member or other contact person whose name  
24 and address have been given to the trustee or the debtor for  
25 the purpose of providing information regarding the patient's  
26 health care, and transmitted to the United States trustee  
27 subject to applicable nonbankruptcy law relating to patient  
28 privacy. Unless the court orders otherwise, a hearing on the  
29 motion may not be commenced earlier than 15 days after  
30 service of the motion.

#### COMMITTEE NOTE

This rule is new and implements § 333 of the Code, added by the 2005 amendments. Subdivision (a) is designed to give parties in interest, including patients or their representatives, sufficient notice so that they will be able to review written reports or attend hearings at which reports are made. The rule permits a notice to relate to a single report or to periodic reports to be given during the case. For example, the ombudsman may give notice that reports will be made at specified intervals or dates during the case.

Subdivision (a) of the rule also requires that the notice be posted conspicuously at the health care facility in a place where it will be seen by patients and their families or others visiting the patients. This may require posting in common areas and patient rooms within the facility. Because health care facilities and the patients they serve can vary greatly, the locations of the posted notice should be tailored to the specific facility that is the subject of the report.

Subdivision (b) requires the ombudsman to notify the patient and the United States trustee that the ombudsman is seeking access to confidential patient records so that they will be able to appear and be heard on the matter. This procedure should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality. Notices given under this rule are subject to the provisions of applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

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Changes Made After Publication:

Two stylistic changes were made to the rule. The reference to the court's authority to order otherwise was moved from the beginning to the end of the first sentence of subdivision (a). On line 19, the word "patient" was substituted for "health" to be consistent with the Code.

**Rule 2015.2. Transfer of Patient in Health Care Business Case**

1           Unless the court orders otherwise, if the debtor is a  
2           health care business, the trustee may not transfer a patient to  
3           another health care business under § 704(a)(12) of the Code  
4           unless the trustee gives at least 10 days' notice of the transfer  
5           to the patient care ombudsman, if any, the patient, and any  
6           family member or other contact person whose name and  
7           address have been given to the trustee or the debtor for the  
8           purpose of providing information regarding the patient's  
9           health care. The notice is subject to applicable nonbankruptcy  
10          law relating to patient privacy.

**COMMITTEE NOTE**

This rule is new. Section 704(a)(12), added to the Code by the 2005 amendments, authorizes the trustee to relocate patients when a health care business debtor's facility is in the process of being closed. The Code permits the trustee to take this action without the need for any court order, but the notice required by this rule will



enable a patient care ombudsman appointed under § 333, or a patient who contends that the trustee's actions violate § 704(a)(12), to have those issues resolved before the patient is transferred.

This rule also permits the court to enter an order dispensing with or altering the notice requirement in proper circumstances. For example, a facility could be closed immediately, or very quickly, such that 10 days' notice would not be possible in some instances. In that event, the court may shorten the time required for notice.

Notices given under this rule are subject to the provisions of applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

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Changes Made After Publication:

No changes were made after publication.

**Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest**

- 1           (a) REPORTING REQUIREMENT. In a chapter 11  
2           case, the trustee or debtor in possession shall file periodic  
3           financial reports of the value, operations, and profitability of

4 each entity that is not a publicly traded corporation or a debtor  
5 in a case under title 11, and in which the estate holds a  
6 substantial or controlling interest. The reports shall be  
7 prepared as prescribed by the appropriate Official Form, and  
8 shall be based upon the most recent information reasonably  
9 available to the trustee or debtor in possession.

10 (b) TIME FOR FILING; SERVICE. The first report  
11 required by this rule shall be filed no later than five days  
12 before the first date set for the meeting of creditors under  
13 § 341 of the Code. Subsequent reports shall be filed no less  
14 frequently than every six months thereafter, until the effective  
15 date of a plan or the case is dismissed or converted. Copies  
16 of the report shall be served on the United States trustee, any  
17 committee appointed under § 1102 of the Code, and any other  
18 party in interest that has filed a request therefor.

19           (c) PRESUMPTION OF SUBSTANTIAL OR  
20           CONTROLLING INTEREST; JUDICIAL  
21           DETERMINATION. For purposes of this rule, an entity of  
22           which the estate controls or owns at least a 20 percent  
23           interest, shall be presumed to be an entity in which the estate  
24           has a substantial or controlling interest. An entity in which  
25           the estate controls or owns less than a 20 percent interest shall  
26           be presumed not to be an entity in which the estate has a  
27           substantial or controlling interest. Upon motion, the entity,  
28           any holder of an interest therein, the United States trustee, or  
29           any other party in interest may seek to rebut either  
30           presumption, and the court shall, after notice and a hearing,  
31           determine whether the estate's interest in the entity is  
32           substantial or controlling.

33           (d) MODIFICATION OF REPORTING  
34           REQUIREMENT. The court may, after notice and a hearing,

74 FEDERAL RULES OF BANKRUPTCY PROCEDURE

35 vary the reporting requirement established by subdivision (a)  
36 of this rule for cause, including that the trustee or debtor in  
37 possession is not able, after a good faith effort, to comply  
38 with those reporting requirements, or that the information  
39 required by subdivision (a) is publicly available.

40 (e) NOTICE AND PROTECTIVE ORDERS. No later  
41 than 14 days before filing the first report required by this rule,  
42 the trustee or debtor in possession shall send notice to the  
43 entity in which the estate has a substantial or controlling  
44 interest, and to all holders – known to the trustee or debtor in  
45 possession – of an interest in that entity, that the trustee or  
46 debtor in possession expects to file and serve financial  
47 information relating to the entity in accordance with this rule.  
48 The entity in which the estate has a substantial or controlling  
49 interest, or a person holding an interest in that entity, may  
50 request protection of the information under § 107 of the Code.

51           (f) EFFECT OF REQUEST. Unless the court orders  
52           otherwise, the pendency of a request under subdivisions (c),  
53           (d), or (e) of this rule shall not alter or stay the requirements  
54           of subdivision (a).

#### COMMITTEE NOTE

This rule implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”). Reports are to be made on the appropriate Official Form. While § 419 of BAPCPA places the obligation to report upon the “debtor,” this rule extends the obligation to include cases in which a trustee has been appointed. The court can order that the reports not be filed in appropriate circumstances, such as when the information that would be included in these reports is already available to interested parties.

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#### Changes After Publication:

In subdivision (e), the 20 day period was changed to 14 days. This better reconciles the timing of the notice and the scheduling of the § 341 meeting of creditors, and it is also consistent with the upcoming time computation amendments.

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

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\* \* \* \* \*

Sec. II-A, Page 75

2 (c) TIME FOR FILING. In a chapter 7 liquidation,  
3 chapter 12 family farmer's debt adjustment, or chapter 13  
4 individual's debt adjustment case, a proof of claim is timely  
5 filed if it is filed not later than 90 days after the first date set  
6 for the meeting of creditors called under § 341(a) of the Code,  
7 except as follows:

8 (1) A proof of claim filed by a governmental unit,  
9 other than for a claim resulting from a tax return filed under  
10 § 1308, is timely filed if it is filed not later than 180 days after  
11 the date of the order for relief. ~~On motion of a governmental~~  
12 ~~unit before the expiration of such period and for cause shown,~~  
13 ~~the court may extend the time for filing of a claim by the~~  
14 ~~governmental unit. A proof of claim filed by a governmental~~  
15 unit for a claim resulting from a tax return filed under § 1308  
16 is timely filed if it is filed no later than 180 days after the date  
17 of the order for relief or 60 days after the date of the filing of

18 the tax return. The court may, for cause, enlarge the time for  
19 a governmental unit to file a proof of claim only upon motion  
20 of the governmental unit made before expiration of the period  
21 for filing a timely proof of claim.

22 \* \* \* \* \*

23 (5) If notice of insufficient assets to pay a dividend  
24 was given to creditors pursuant to under Rule 2002(e), and  
25 subsequently the trustee notifies the court that payment of a  
26 dividend appears possible, the clerk shall ~~notify~~ give at least  
27 90 days' notice by mail to the creditors of that fact and ~~that~~  
28 ~~they may file~~ of the date by which proofs of claim ~~within 90~~  
29 ~~days after the mailing of the notice~~ must be filed.

30 (6) If notice of the time to file a proof of claim has  
31 been mailed to a creditor at a foreign address, on motion filed  
32 by the creditor before or after the expiration of the time, the  
33 court may extend the time by not more than 60 days if the

34 court finds that the notice was insufficient under the  
35 circumstances to give the creditor a reasonable time to file a  
36 proof of claim.

#### COMMITTEE NOTE

Subdivision (c)(1) is amended to reflect the addition of § 1308 to the Bankruptcy Code in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision (c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case. The amendment also allows the governmental unit to move for additional time to file a proof of claim prior to expiration of the applicable filing period.

Subdivision (c)(5) of the rule is amended to set a new period for providing notice to creditors that they may file a proof of claim in a case in which they were previously informed that there was no need to file a claim. Under Rule 2002(e), if it appears that there will be no distribution to creditors, the creditors are notified of this fact and are informed that if assets are later discovered and a distribution is likely that a new notice will be given to the creditors. This second notice is prescribed by Rule 3002(c)(5). The rule is amended to direct the clerk to give at least 90 days' notice of the time within which creditors may file a proof of claim. Setting the deadline in this manner allows the notices being sent to creditors to be more accurate regarding the deadline than was possible under the prior rule. The rule previously began the 90 day notice period from the time of the



mailing of the notice, a date that could vary and generally would not even be known to the creditor. Under the amended rule, the notice will identify a specific bar date for filing proofs of claim thereby being more helpful to the creditors.

Subdivision (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with § 1514(d), added to the Code by the 2005 amendments, and requires that the rules and orders of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

Other changes are stylistic.

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Changes Made After Publication:

Subdivision (c)(1) was amended to allow governmental units to move for an enlargement of the time to file a proof of claim. The Committee Note was amended to describe this addition to the rule.

**Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases**

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(c) FILING PROOF OF CLAIM.

(1) *Who May File.* Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

(2) *Who Must File.* Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) *Time for Filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and

17 under the conditions stated in Rule 3002(c)(2), (c)(3), and  
18 (c)(4), and (c)(6).

19 (4) *Effect of Filing Claim or Interest.* A proof of  
20 claim or interest executed and filed in accordance with this  
21 subdivision shall supersede any scheduling of that claim or  
22 interest pursuant to § 521(a)(1) of the Code.

23 (5) *Filing by Indenture Trustee.* An indenture  
24 trustee may file a claim on behalf of all known or unknown  
25 holders of securities issued pursuant to the trust instrument  
26 under which it is trustee.

27 \* \* \* \* \*

#### COMMITTEE NOTE

Subdivision (c)(3) is amended to implement § 1514(d) of the Code, which was added by the 2005 amendments. It makes the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. This change was necessary so that creditors with foreign addresses be provided such additional time as is reasonable under the circumstances to file proofs of claims.

Changes Made After Publication:

No changes were made after publication.

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

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(b) DISCLOSURE STATEMENT. In a chapter 9 or 11

3

case, a disclosure statement under § 1125 of the Code or

4

evidence showing compliance with § 1126(b) ~~of the Code~~

5

shall be filed with the plan or within a time fixed by the court,

6

unless the plan is intended to provide adequate information

7

under § 1125(f)(1). If the plan is intended to provide

8

adequate information under § 1125(f)(1), it shall be so

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designated and Rule 3017.1 shall apply as if the plan is a

10

disclosure statement.

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\* \* \* \* \*

Sec. II-A, Page 82

12            (d) STANDARD FORM SMALL BUSINESS  
13            DISCLOSURE STATEMENT AND PLAN. In a small  
14            business case, the court may approve a disclosure statement  
15            and may confirm a plan that conform substantially to the  
16            appropriate Official Forms or other standard forms approved  
17            by the court.

**COMMITTEE NOTE**

Subdivision (b) is amended to recognize that, in 2005, § 1125(f)(1) was added to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1 and is subject to all other rules applicable to disclosure statements in small business cases.

Subdivision (d) is added to the rule to implement § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 which requires the promulgation of Official Forms for plans and disclosure statements in small business cases. Section 1125(f)(2) of the Code provides that the court may approve a disclosure statement submitted on the appropriate Official Form or on a standard form approved by the court. The rule takes no position on whether a court

may require a local standard form disclosure statement or plan of reorganization in lieu of the Official Forms.

Other amendments are stylistic.

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Changes Made After Publication:

No changes were made after publication.

**Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case**

1           (a) **CONDITIONAL APPROVAL OF DISCLOSURE**  
2           **STATEMENT. ~~If the debtor is~~ In a small business case ~~and~~**  
3           **~~has made a timely election to be considered a small business~~**  
4           **~~in a chapter 11 case,~~ the court may, on application of the plan**  
5           **~~proponent~~ or on its own initiative, conditionally approve a**  
6           **disclosure statement filed in accordance with Rule 3016**(b)**.**  
7           On or before conditional approval of the disclosure statement,  
8           the court shall:

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

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

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

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

17 \* \* \* \* \*

#### COMMITTEE NOTE

Section 101 of the Code, as amended in 2005, defines a “small business case” and “small business debtor,” and eliminates any need to elect that status. Therefore, the reference in the rule to an election is deleted.

As provided in the amendment to Rule 3016(b), a plan intended to provide adequate information in a small business case under § 1125(f)(1) may be conditionally approved and is otherwise treated as a disclosure statement under this rule.

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Changes Made After Publication:

No changes were made after publication.

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

1           (a) MODIFICATION OF PLAN BEFORE  
2           CONFIRMATION. In a chapter 9 or chapter 11 case, after a  
3           plan has been accepted and before its confirmation, the  
4           proponent may file a modification of the plan. If the court  
5           finds after hearing on notice to the trustee, any committee  
6           appointed under the Code, and any other entity designated by  
7           the court that the proposed modification does not adversely  
8           change the treatment of the claim of any creditor or the  
9           interest of any equity security holder who has not accepted in  
10          writing the modification, it shall be deemed accepted by all



11 creditors and equity security holders who have previously  
12 accepted the plan.

13 (b) MODIFICATION OF PLAN AFTER  
14 CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the  
15 debtor is an individual, a request to modify the plan under  
16 § 1127(e) of the Code is governed by Rule 9014. The request  
17 shall identify the proponent and shall be filed together with  
18 the proposed modification. The clerk, or some other person  
19 as the court may direct, shall give the debtor, the trustee, and  
20 all creditors not less than 20 days' notice by mail of the time  
21 fixed to file objections and, if an objection is filed, the  
22 hearing to consider the proposed modification, unless the  
23 court orders otherwise with respect to creditors who are not  
24 affected by the proposed modification. A copy of the notice  
25 shall be transmitted to the United States trustee, together with  
26 a copy of the proposed modification. Any objection to the

27 proposed modification shall be filed and served on the debtor,  
28 the proponent of the modification, the trustee, and any other  
29 entity designated by the court, and shall be transmitted to the  
30 United States trustee.

#### COMMITTEE NOTE

The 2005 amendments to § 1127 of the Code provide for modification of a confirmed plan in an individual debtor chapter 11 case. Therefore, the rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.

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#### Changes Made After Publication:

The last sentence of the published rule provided that an objection to modification of a plan is governed by Rule 9014. The sentence is deleted and the reference to Rule 9014 is moved to the first sentence of subdivision (b) of the rule. The Committee Note was revised to make the reference to the 2005 amendments to the Bankruptcy Code consistent with their identification in other Committee Notes.

#### **Rule 4002. Duties of Debtor**

1           (a) IN GENERAL. In addition to performing other  
2 duties prescribed by the Code and rules, the debtor shall:

3                   (1) attend and submit to an examination at the  
4 times ordered by the court;

5                   (2) attend the hearing on a complaint objecting to  
6 discharge and testify, if called as a witness;

7                   (3) inform the trustee immediately in writing as to  
8 the location of real property in which the debtor has an  
9 interest and the name and address of every person holding  
10 money or property subject to the debtor's withdrawal or order  
11 if a schedule of property has not yet been filed pursuant to  
12 Rule 1007;

13                   (4) cooperate with the trustee in the preparation of  
14 an inventory, the examination of proofs of claim, and the  
15 administration of the estate; and

16 (5) file a statement of any change of the debtor's  
17 address.

18 (b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE  
19 DOCUMENTATION.

20 (1) Personal Identification. Every individual  
21 debtor shall bring to the meeting of creditors under § 341:

22 (A) a picture identification issued by a  
23 governmental unit, or other personal identifying information  
24 that establishes the debtor's identity; and

25 (B) evidence of social-security number(s), or  
26 a written statement that such documentation does not exist.

27 (2) Financial Information. Every individual  
28 debtor shall bring to the meeting of creditors under § 341, and  
29 make available to the trustee, the following documents or  
30 copies of them, or provide a written statement that the

31 documentation does not exist or is not in the debtor's  
32 possession:

33 (A) evidence of current income such as the  
34 most recent payment advice;

35 (B) unless the trustee or the United States  
36 trustee instructs otherwise, statements for each of the debtor's  
37 depository and investment accounts, including checking,  
38 savings, and money market accounts, mutual funds and  
39 brokerage accounts for the time period that includes the date  
40 of the filing of the petition; and

41 (C) documentation of monthly expenses  
42 claimed by the debtor if required by § 707(b)(2)(A) or (B).

43 (3) Tax Return. At least 7 days before the first  
44 date set for the meeting of creditors under § 341, the debtor  
45 shall provide to the trustee a copy of the debtor's federal  
46 income tax return for the most recent tax year ending

47 immediately before the commencement of the case and for  
48 which a return was filed, including any attachments, or a  
49 transcript of the tax return, or provide a written statement that  
50 the documentation does not exist.

51 (4) Tax Returns Provided to Creditors. If a  
52 creditor, at least 15 days before the first date set for the  
53 meeting of creditors under § 341, requests a copy of the  
54 debtor's tax return that is to be provided to the trustee under  
55 subdivision (b)(3), the debtor, at least 7 days before the first  
56 date set for the meeting of creditors under § 341, shall provide  
57 to the requesting creditor a copy of the return, including any  
58 attachments, or a transcript of the tax return, or provide a  
59 written statement that the documentation does not exist.

60 (5) Confidentiality of Tax Information. The  
61 debtor's obligation to provide tax returns under Rule  
62 4002(b)(3) and (b)(4) is subject to procedures for

63 safeguarding the confidentiality of tax information established  
64 by the Director of the Administrative Office of the United  
65 States Courts.

#### COMMITTEE NOTE

This rule is amended to implement § 521(a)(1)(B)(iv) and (e)(2), added to the Code by the 2005 amendments. These Code amendments expressly require the debtor to file with the court, or provide to the trustee, specific documents. The amendments to the rule implement these obligations and establish a time frame for creditors to make requests for a copy of the debtor's Federal income tax return. The rule also requires the debtor to provide documentation in support of claimed expenses under § 707(b)(2)(A) and (B).

Subdivision (b) of the rule is also amended to require the debtor to cooperate with the trustee by providing materials and documents necessary to assist the trustee in the performance of the trustee's duties. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521, or to limit the access of the Attorney General to any information provided by the debtor in the case. Subdivision (b)(2) does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the meeting of creditors under § 341 the documents which the debtor possesses. Under subdivision (b)(2)(B), the trustee or the United States trustee can instruct debtors that they need not provide the documents described in that subdivision. Under subdivisions (b)(3) and (b)(4), the debtor must

obtain and provide copies of tax returns or tax transcripts to the appropriate person, unless no such documents exist. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials provided to the trustee would not be made available to any other party in interest at the § 341 meeting of creditors other than the Attorney General. Some of the documents may contain otherwise private information that should not be disseminated. For example, pay stubs and financial account statements might include the social-security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. The debtor should redact all but the last four digits of all social-security numbers and the names of any minors when they appear in these documents. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.

Tax information produced under this rule is subject to procedures for safeguarding confidentiality established by the Director of the Administrative Office of the United States Courts.

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Changes Made After Publication:

The second paragraph of the Committee Note was amended to clarify that the debtor's duty to provide copies of tax returns or tax



transcripts are governed by a different standard than the debtor's duty to provide other financial information.

**Rule 4003. Exemptions**

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(b) OBJECTING TO A CLAIM OF EXEMPTIONS.

(1) Except as provided in paragraphs (2) and (3), a

A party in interest may file an objection to the list of property claimed as exempt ~~only~~ within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

(2) The trustee may file an objection to a claim of

exemption at any time prior to one year after the closing of

13 the case if the debtor fraudulently asserted the claim of  
14 exemption. The trustee shall deliver or mail the objection to  
15 the debtor and the debtor's attorney, and to any person filing  
16 the list of exempt property and that person's attorney.

17 (3) An objection to a claim of exemption based on  
18 § 522(q) shall be filed before the closing of the case. If an  
19 exemption is first claimed after a case is reopened, an  
20 objection shall be filed before the reopened case is closed.

21 (4) Copies A copy of the any objection objections shall  
22 be delivered or mailed to the trustee, the debtor and the  
23 debtor's attorney, and the person filing the list; and the that  
24 person's attorney for that person.

25 \* \* \* \* \*

26 (d) AVOIDANCE BY DEBTOR OF TRANSFERS OF  
27 EXEMPT PROPERTY. A proceeding by the debtor to avoid  
28 a lien or other transfer of property exempt under § 522(f) of

29 the Code shall be by motion in accordance with Rule 9014.  
 30 Notwithstanding the provisions of subdivision (b), a creditor  
 31 may object to a motion filed under § 522(f) by challenging the  
 32 validity of the exemption asserted to be impaired by the lien.

**COMMITTEE NOTE**

Subdivision (b) is rewritten to include four paragraphs.

Subdivision (b)(2) is added to the rule to permit the trustee to object to an exemption at any time up to one year after the closing of the case if the debtor fraudulently claimed the exemption. Extending the deadline for trustees to object to an exemption when the exemption claim has been fraudulently made will permit the court to review and, in proper circumstances, deny improperly claimed exemptions, thereby protecting the legitimate interests of creditors and the bankruptcy estate. However, similar to the deadline set in § 727(e) of the Code for revoking a discharge which was fraudulently obtained, an objection to an exemption that was fraudulently claimed must be filed within one year after the closing of the case. Subdivision (b)(2) extends the objection deadline only for trustees.

Subdivision (b)(3) is added to the rule to reflect the addition of subsection (q) to § 522 of the Code by the 2005 Act. Section 522(q) imposes a \$136,875 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider

issues relating to § 522(q) late in the case, and the 30-day period for objections would not be appropriate for this provision.

Subdivision (d) is amended to clarify that a creditor with a lien on property that the debtor is attempting to avoid on the grounds that the lien impairs an exemption may raise in defense to the lien avoidance action any objection to the debtor's claimed exemption. The right to object is limited to an objection to the exemption of the property subject to the lien and for purposes of the lien avoidance action only. The creditor may not object to other exemption claims made by the debtor. Those objections, if any, are governed by Rule 4003(b).

Other changes are stylistic.

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Changes Made After Publication:

The deadline for filing objections to exemptions under subdivision (b)(1) was returned to 30 days after the conclusion of the § 341 meeting of creditors rather than the 60 day period proposed in the published rule. The second paragraph of the Committee Note which discussed this change was therefore deleted. Subdivisions (b)(2) and (b)(3) were amended to add the debtor and the debtor's attorney to the list of persons to whom objections to exemptions must be delivered.

**Rule 4004. Grant or Denial of Discharge**

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\* \* \* \* \*

Sec. II-A, Page 98

2 (c) GRANT OF DISCHARGE.

3 (1) In a chapter 7 case, on expiration of the time  
4 fixed for filing a complaint objecting to discharge and the  
5 time fixed for filing a motion to dismiss the case under Rule  
6 1017(e), the court shall forthwith grant the discharge unless:

7 (A) the debtor is not an individual; ;

8 (B) a complaint objecting to the discharge has  
9 been filed; ;

10 (C) the debtor has filed a waiver under  
11 § 727(a)(10); ;

12 (D) a motion to dismiss the case under § 707  
13 is pending; ;

14 (E) a motion to extend the time for filing a  
15 complaint objecting to the discharge is pending; ;

100 FEDERAL RULES OF BANKRUPTCY PROCEDURE

16 (F) a motion to extend the time for filing a  
17 motion to dismiss the case under Rule 1017(e)(1) is pending;  
18 or ;

19 (G) the debtor has not paid in full the filing  
20 fee prescribed by 28 U.S.C. § 1930(a) and any other fee  
21 prescribed by the Judicial Conference of the United States  
22 under 28 U.S.C. § 1930(b) that is payable to the clerk upon  
23 the commencement of a case under the Code, unless the court  
24 has waived the fees under 28 U.S.C. § 1930(f);

25 (H) the debtor has not filed with the court a  
26 statement of completion of a course concerning personal  
27 financial management as required by Rule 1007(b)(7);

28 (I) a motion to delay or postpone discharge  
29 under § 727(a)(12) is pending;

30 (J) a motion to enlarge the time to file a  
31 reaffirmation agreement under Rule 4008(a) is pending;

32                   (K) a presumption has arisen under § 524(m)

33                   that a reaffirmation agreement is an undue hardship; or

34                   (L) a motion is pending to delay discharge,

35                   because the debtor has not filed with the court all tax

36                   documents required to be filed under § 521(f).

37                                           \* \* \* \* \*

38                   (3) If the debtor is required to file a statement

39                   under Rule 1007(b)(8), the court shall not grant a discharge

40                   earlier than 30 days after the statement is filed.

41                                           \* \* \* \* \*

**COMMITTEE NOTE**

Subdivision (c)(1)(G) is amended to reflect the fee waiver provision in 28 U.S.C. § 1930, added by the 2005 amendments.

Subdivision (c)(1)(H) is new. It reflects the 2005 addition to the Code of §§ 727(a)(11) and 1328(g), which require that individual debtors complete a course in personal financial management as a condition to the entry of a discharge. Including this requirement in the rule helps prevent the inadvertent entry of a discharge when the debtor has not complied with this requirement. If a debtor fails to file

the required statement regarding a personal financial management course, the clerk will close the bankruptcy case without the entry of a discharge.

Subdivision (c)(1)(I) is new. It reflects the 2005 addition to the Code of § 727(a)(12). This provision is linked to § 522(q). Section 522(q) limits the availability of the homestead exemption for individuals who have been convicted of a felony or who owe a debt arising from certain causes of action within a particular time frame. The existence of reasonable cause to believe that § 522(q) may be applicable to the debtor constitutes grounds for withholding the discharge.

Subdivision (c)(1)(J) is new. It accommodates the deadline for filing a reaffirmation agreement established by Rule 4008(a).

Subdivision (c)(1)(K) is new. It reflects the 2005 revisions to § 524 of the Code that alter the requirements for approval of reaffirmation agreements. Section 524(m) sets forth circumstances under which a reaffirmation agreement is presumed to be an undue hardship. This triggers an obligation to review the presumption and may require notice and a hearing. Subdivision (c)(1)(J) has been added to prevent the discharge from being entered until the court approves or disapproves the reaffirmation agreement in accordance with § 524(m).

Subdivision (c)(1)(L) is new. It implements § 1228(a) of Public Law Number 109-8, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which prohibits entry of a discharge unless required tax documents have been provided to the court.



Subdivision (c)(3) is new. It postpones the entry of the discharge of an individual debtor in a case under chapter 11, 12, or 13 if there is a question as to the applicability of § 522(q) of the Code. The postponement provides an opportunity for a creditor to file a motion to limit the debtor's exemption under that provision.

Other changes are stylistic.

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Changes Made After Publication:

No changes were made after publication.

**Rule 4006. Notice of No Discharge**

1           If an order is entered; denying a discharge; or revoking  
2           a discharge; or if approving a waiver of discharge; is filed or,  
3           in the case of an individual debtor, closing the case without  
4           the entry of a discharge, the clerk ~~;~~ ~~after the order becomes~~  
5           ~~final or the waiver is filed~~; shall promptly ~~give notice thereof~~  
6           to notify all creditors parties in interest in the manner  
7           provided ~~in~~ by Rule 2002.



7 OF TIME FIXED. Except as otherwise provided in  
 8 subdivision (d), a ~~★~~ complaint to determine the  
 9 dischargeability of a debt under § 523(c) shall be filed no later  
 10 than 60 days after the first date set for the meeting of creditors  
 11 under § 341(a). The court shall give all creditors no less than  
 12 30 days' notice of the time so fixed in the manner provided in  
 13 Rule 2002. On motion of a party in interest, after hearing on  
 14 notice, the court may for cause extend the time fixed under  
 15 this subdivision. The motion shall be filed before the time  
 16 has expired.

17 (d) TIME FOR FILING COMPLAINT UNDER  
 18 § ~~523(c)~~ 523(a)(6) IN A CHAPTER 13 INDIVIDUAL'S  
 19 DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED.  
 20 On motion by a debtor for a discharge under § 1328(b), the  
 21 court shall enter an order fixing the time to file a complaint to  
 22 determine the dischargeability of any debt under § ~~523(c)~~

23        523(a)(6) and shall give no less than 30 days' notice of the  
24        time fixed to all creditors in the manner provided in Rule  
25        2002. On motion of any party in interest, after hearing on  
26        notice, the court may for cause extend the time fixed under  
27        this subdivision. The motion shall be filed before the time  
28        has expired.

29

\* \* \* \* \*

#### COMMITTEE NOTE

Subdivision (c) is amended because of the 2005 amendments to § 1328(a) of the Code. This revision expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c).

The amendment to subdivision (d) reflects the 2005 amendments to § 1328(a) that expands the exceptions to discharge upon completion of a chapter 13 plan, including two out of three of the provisions that fall within § 523(c). However, the 2005 revisions to § 1328(a) do not include a reference to § 523(a)(6), which is the third provision to which § 523(c) refers. Thus, subdivision (d) is now limited to that provision.

Changes Made After Publication:

No changes were made after publication.

**Rule 4008. Discharge and Reaffirmation Hearing Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement**

1           (a) FILING OF REAFFIRMATION AGREEMENT. A  
2           reaffirmation agreement shall be filed no later than 60 days  
3           after the first date set for the meeting of creditors under  
4           § 341(a) of the Code. The court may, at any time and in its  
5           discretion, enlarge the time to file a reaffirmation agreement.  
6           ~~Not more than 30 days following the entry of an order—~~  
7           ~~granting or denying a discharge, or confirming a plan in a~~  
8           ~~chapter 11 reorganization case concerning an individual~~  
9           ~~debtor and on not less than 10 days notice to the debtor and~~  
10          ~~the trustee, the court may hold a hearing as provided in~~

108 FEDERAL RULES OF BANKRUPTCY PROCEDURE

11 ~~§ 524(d) of the Code. A motion by the debtor for approval of~~  
12 ~~a reaffirmation agreement shall be filed before or at the~~  
13 ~~hearing.~~

14 (b) STATEMENT IN SUPPORT OF \_\_\_\_\_  
15 REAFFIRMATION AGREEMENT. The debtor's statement  
16 required under § 524(k)(6)(A) of the Code shall be  
17 accompanied by a statement of the total income and expenses  
18 stated on schedules I and J. If there is a difference between  
19 the total income and expenses stated on those schedules and  
20 the statement required under § 524(k)(6)(A), the statement  
21 required by this subdivision shall include an explanation of  
22 the difference.

**COMMITTEE NOTE**

This rule is amended to establish a deadline for filing reaffirmation agreements. The Code sets out a number of prerequisites to the enforceability of reaffirmation agreements. Among those requirements, § 524(k)(6)(A) provides that each

reaffirmation agreement must be accompanied by a statement indicating the debtor's ability to make the payments called for by the agreement. In the event that this statement reflects an insufficient income to allow payment of the reaffirmed debt, § 524(m) provides that a presumption of undue hardship arises, allowing the court to disapprove the reaffirmation agreement, but only after a hearing conducted prior to the entry of discharge. Rule 4004(c)(1)(K) accommodates this provision by delaying the entry of discharge where a presumption of undue hardship arises. However, in order for that rule to be effective, the reaffirmation agreement itself must be filed before the entry of discharge. Under Rule 4004(c)(1) discharge is to be entered promptly after the expiration of the time for filing a complaint objecting to discharge, which, under Rule 4004(a), is 60 days after the first date set for the meeting of creditors under § 341(a). Accordingly, that date is set as the deadline for filing a reaffirmation agreement.

Any party may file the agreement with the court. Thus, whichever party has a greater incentive to enforce the agreement usually will file it. In the event that the parties are unable to file a reaffirmation agreement in a timely fashion, the rule grants the court broad discretion to permit a late filing. A corresponding change to Rule 4004(c)(1)(J) accommodates such an extension by providing for a delay in the entry of discharge during the pendency of a motion to extend the time for filing a reaffirmation agreement.

Rule 4008 is also amended by deleting provisions regarding the timing of any reaffirmation and discharge hearing. As noted above, § 524(m) itself requires that hearings on undue hardship be conducted prior to the entry of discharge. In other respects, including hearings to approve reaffirmation agreements of unrepresented

debtors under § 524(c)(6), the rule leaves discretion to the court to set the hearing at a time appropriate for the particular circumstances presented in the case and consistent with the scheduling needs of the parties.

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Changes Made After Publication:

The only change was stylistic. The phrase “of the Code” was added to subdivision (b).

**Rule 5001. Courts and Clerks’ Offices**

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\* \* \* \* \*

2

(b) TRIALS AND HEARINGS; ORDERS IN

3

CHAMBERS. All trials and hearings shall be conducted in

4

open court and so far as convenient in a regular court room.

5

Except as otherwise provided in 28 U.S.C. § 152(c), all ~~At~~

6

other acts or proceedings may be done or conducted by a

7

judge in chambers and at any place either within or without

8

the district; but no hearing, other than one ex parte, shall be



9 conducted outside the district without the consent of all  
10 parties affected thereby.

11 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to permit bankruptcy judges to hold hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the 2005 amendment to 28 U.S.C. § 152(c). Under that provision, bankruptcy judges may hold court outside of their districts in emergency situations and when the business of the court otherwise so requires. This amendment to the rule is intended to implement the legislation.

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Changes Made After Publication:

No changes were made after publication.

**Rule 5003. Records Kept By the Clerk**

1 \* \* \* \* \*

2 (e) REGISTER OF MAILING ADDRESSES OF  
3 FEDERAL AND STATE GOVERNMENTAL UNITS AND

112 FEDERAL RULES OF BANKRUPTCY PROCEDURE

4 CERTAIN TAXING AUTHORITIES. The United States or  
5 the state or territory in which the court is located may file a  
6 statement designating its mailing address. The United States,  
7 state, territory, or local governmental unit responsible for  
8 collecting taxes within the district in which the case is  
9 pending may also file a statement designating an address for  
10 service of requests under § 505(b) of the Code, and the  
11 designation shall describe where further information  
12 concerning additional requirements for filing such requests  
13 may be found. The clerk shall keep, in the form and manner  
14 as the Director of the Administrative Office of the United  
15 States Courts may prescribe, a register that includes ~~these~~ the  
16 mailing addresses; designated under the first sentence of this  
17 subdivision, and a separate register of the addresses  
18 designated for the service of requests under § 505(b) of the  
19 Code. ~~but the~~ The clerk is not required to include in the any

20 single register more than one mailing address for each  
21 department, agency, or instrumentality of the United States or  
22 the state or territory. If more than one address for a  
23 department, agency, or instrumentality is included in the  
24 register, the clerk shall also include information that would  
25 enable a user of the register to determine the circumstances  
26 when each address is applicable, and mailing notice to only  
27 one applicable address is sufficient to provide effective  
28 notice. The clerk shall update the register annually, effective  
29 January 2 of each year. The mailing address in the register is  
30 conclusively presumed to be a proper address for the  
31 governmental unit, but the failure to use that mailing address  
32 does not invalidate any notice that is otherwise effective  
33 under applicable law.

34 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement § 505(b)(1) of the Code added by the 2005 amendments, which allows a taxing authority to designate an address to use for the service of requests under that subsection. Under the amendment, the clerk is directed to maintain a separate register for mailing addresses of governmental units solely for the service of requests under § 505(b). This register is in addition to the register of addresses of governmental units already maintained by the clerk. The clerk is required to keep only one address for a governmental unit in each register.

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Changes Made After Publication:

Subdivision (e) was amended to clarify that the clerk must maintain a separate mailing address register that contains the addresses to which notices pertaining to actions under § 505 of the Code are to be sent.

**Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors**

1           If a presumption of abuse has arisen under § 707(b) in a  
2           chapter 7 case of an individual with primarily consumer debts,  
3           the clerk shall within 10 days after the date of the filing of the  
4           petition notify creditors of the presumption of abuse in

5 accordance with Rule 2002. If the debtor has not filed a  
6 statement indicating whether a presumption of abuse has  
7 arisen, the clerk shall within 10 days after the date of the  
8 filing of the petition notify creditors that the debtor has not  
9 filed the statement and that further notice will be given if a  
10 later filed statement indicates that a presumption of abuse has  
11 arisen. If a debtor later files a statement indicating that a  
12 presumption of abuse has arisen, the clerk shall notify  
13 creditors of the presumption of abuse as promptly as  
14 practicable.

#### COMMITTEE NOTE

This rule is new. The 2005 amendments to § 342 of the Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent

the first notice, and the debtor's statement indicates a presumption of abuse, the rule requires that the clerk send a second notice.

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Changes Made After Publication:

No changes were made after publication.

**Rule 6004. Use, Sale, or Lease of Property**

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\* \* \* \* \*

2

(g) SALE OF PERSONALLY IDENTIFIABLE

3

INFORMATION.

4

(1) Motion. A motion for authority to sell or lease

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personally identifiable information under § 363(b)(1)(B) shall

6

include a request for an order directing the United States

7

trustee to appoint a consumer privacy ombudsman under

8

§ 332. Rule 9014 governs the motion which shall be served

9

on: any committee elected under § 705 or appointed under

10

§ 1102 of the Code, or if the case is a chapter 11

11 reorganization case and no committee of unsecured creditors  
12 has been appointed under § 1102, on the creditors included on  
13 the list of creditors filed under Rule 1007(d); and on such  
14 other entities as the court may direct. The motion shall be  
15 transmitted to the United States trustee.

16 (2) Appointment. If a consumer privacy  
17 ombudsman is appointed under § 332, no later than 5 days  
18 before the hearing on the motion under § 363(b)(1)(B), the  
19 United States trustee shall file a notice of the appointment,  
20 including the name and address of the person appointed. The  
21 United States trustee's notice shall be accompanied by a  
22 verified statement of the person appointed setting forth the  
23 person's connections with the debtor, creditors, any other  
24 party in interest, their respective attorneys and accountants,  
25 the United States trustee, or any person employed in the office  
26 of the United States trustee.

27            ~~(g)~~ (h) STAY OF ORDER AUTHORIZING USE,  
28            SALE, OR LEASE OF PROPERTY. An order authorizing  
29            the use, sale, or lease of property other than cash collateral is  
30            stayed until the expiration of 10 days after entry of the order,  
31            unless the court orders otherwise.

**COMMITTEE NOTE**

The rule is amended by inserting a new subdivision (g) to implement §§ 332 and 363(b)(1)(B) of the Code, added by the 2005 amendments. This rule governs the proposed transfer of personally identifiable information in a manner inconsistent with any policy covering the transfer of the information. Rule 2002(c)(1) requires the seller to state in the notice of the sale or lease whether the transfer is consistent with and policy governing the transfer of the information.

Under § 332 of the Code, the consumer privacy ombudsman must be appointed at least five days prior to the hearing on a sale or lease of personally identifiable information. In an appropriate case, the consumer privacy ombudsman may seek a continuance of the hearing on the proposed sale to perform the tasks required of the ombudsman by § 332 of the Code.

Former subdivision (g) is redesignated as subdivision (h).



Changes Made After Publication:

The Committee Note was amended to highlight the connection between this rule and Rule 2002 with regard to the obligation to provide notice of proposed transactions. It was also amended to recognize the ability of the consumer privacy ombudsman to seek a continuance of a hearing on the proposed sale of personally identifiable information.

**Rule 6011. Disposal of Patient Records in Health Care Business Case**

- 1           (a) NOTICE BY PUBLICATION UNDER § 351(1)(A).
- 2           A notice regarding the claiming or disposing of patient
- 3           records under § 351(1)(A) shall not identify any patient by
- 4           name or other identifying information, but shall:
- 5                     (1) identify with particularity the health care
- 6           facility whose patient records the trustee proposes to destroy;

120 FEDERAL RULES OF BANKRUPTCY PROCEDURE

7           (2) state the name, address, telephone number,  
8           email address, and website, if any, of a person from whom  
9           information about the patient records may be obtained;

10           (3) state how to claim the patient records; and

11           (4) state the date by which patient records must be  
12           claimed, and that if they are not so claimed the records will be  
13           destroyed.

14           (b) NOTICE BY MAIL UNDER § 351(1)(B). Subject  
15           to applicable nonbankruptcy law relating to patient privacy,  
16           a notice regarding the claiming or disposing of patient records  
17           under § 351(1)(B) shall, in addition to including the  
18           information in subdivision (a), direct that a patient's family  
19           member or other representative who receives the notice  
20           inform the patient of the notice. Any notice under this  
21           subdivision shall be mailed to the patient and any family  
22           member or other contact person whose name and address

23 have been given to the trustee or the debtor for the purpose of  
24 providing information regarding the patient's health care, to  
25 the Attorney General of the State where the health care  
26 facility is located, and to any insurance company known to  
27 have provided health care insurance to the patient.

28 (c) PROOF OF COMPLIANCE WITH NOTICE  
29 REQUIREMENT. Unless the court orders the trustee to file  
30 proof of compliance with § 351(1)(B) under seal, the trustee  
31 shall not file, but shall maintain, the proof of compliance for  
32 a reasonable time.

33 (d) REPORT OF DESTRUCTION OF RECORDS. The  
34 trustee shall file, no later than 30 days after the destruction of  
35 patient records under § 351(3), a report certifying that the  
36 unclaimed records have been destroyed and explaining the  
37 method used to effect the destruction. The report shall not  
38 identify any patient by name or other identifying information.

**COMMITTEE NOTE**

This rule is new. It implements § 351(1), which was added to the Code by the 2005 amendments. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The Code provision also requires that individualized notice be sent to each patient and to the patient's family member or other contact person.

The variety of health care businesses and the range of current and former patients present the need for flexibility in the creation and publication of the notices that will be given. Nevertheless, there are some matters that must be included in any notice being given to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (a) of this rule lists the minimum requirements for notices given under § 351(1)(A), and subdivision (b) governs the form of notices under § 351(1)(B). Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Subdivision (c) directs the trustee to maintain proof of compliance with § 351(1)(B), but because the proof of compliance may contain patient names that should or must remain confidential, it prohibits filing the proof of compliance unless the court orders the trustee to file it under seal.

Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. However, because the report will be filed with the court and ordinarily will be available to the public under § 107, the names, addresses, and other identifying information of patients are not to be included in the report to protect patient privacy.

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Changes Made After Publication:

Subdivision (b)(2) was amended to add the Attorney General of the State where a health care facility is located to the list of entities entitled to notice of the disposal of patient records.

**Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals**

1

\* \* \* \* \*

2

(e) ELECTION TO HAVE APPEAL HEARD BY

3

DISTRICT COURT INSTEAD OF BANKRUPTCY

4

APPELLATE PANEL; WITHDRAWAL OF ELECTION.

5

*(1) Separate Writing for Election.* An election to

6

have an appeal heard by the district court under 28 U.S.C.

124 FEDERAL RULES OF BANKRUPTCY PROCEDURE

7 § 158(c)(1) may be made only by a statement of election  
8 contained in a separate writing filed within the time  
9 prescribed by 28 U.S.C. § 158(c)(1).

10 (2) *Withdrawal of Election.* A request to withdraw  
11 the election may be filed only by written stipulation of all the  
12 parties to the appeal or their attorneys of record. Upon such  
13 a stipulation, the district court may either transfer the appeal  
14 to the bankruptcy appellate panel or retain the appeal in the  
15 district court.

16 (f) CERTIFICATION FOR DIRECT APPEAL TO  
17 COURT OF APPEALS.

18 (1) *Timely Appeal Required.* A certification of a  
19 judgment, order, or decree of a bankruptcy court to a court of  
20 appeals under 28 U.S.C. § 158(d)(2) shall not be effective  
21 until a timely appeal has been taken in the manner required by

22 subdivisions (a) or (b) of this rule and the notice of appeal has  
23 become effective under Rule 8002.

24 (2) Court Where Certification Made and Filed. A  
25 certification that a circumstance specified in 28 U.S.C.  
26 § 158(d)(2)(A)(i)-(iii) exists shall be filed in the court in  
27 which a matter is pending for purposes of 28 U.S.C.  
28 § 158(d)(2) and this rule. A matter is pending in a bankruptcy  
29 court until the docketing, in accordance with Rule 8007(b), of  
30 an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the  
31 grant of leave to appeal under 28 U.S.C. § 158(a)(3). A matter  
32 is pending in a district court or bankruptcy appellate panel  
33 after the docketing, in accordance with Rule 8007(b), of an  
34 appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the grant  
35 of leave to appeal under 28 U.S.C. § 158(a)(3).

36 (A) Certification by Court on Request or  
37 Court's Own Initiative.

38                                    (i) Before Docketing or Grant of Leave  
39                                    to Appeal. Only a bankruptcy court may make a certification  
40                                    on request or on its own initiative while the matter is pending  
41                                    in the bankruptcy court.

42                                    (ii) After Docketing or Grant of Leave to  
43                                    Appeal. Only the district court or bankruptcy appellate panel  
44                                    involved may make a certification on request of the parties or  
45                                    on its own initiative while the matter is pending in the district  
46                                    court or bankruptcy appellate panel.

47                                    (B) Certification by All Appellants and  
48                                    Appellees Acting Jointly. A certification by all the appellants  
49                                    and appellees, if any, acting jointly may be made by filing the  
50                                    appropriate Official Form with the clerk of the court in which  
51                                    the matter is pending. The certification may be accompanied  
52                                    by a short statement of the basis for the certification, which



53 may include the information listed in subdivision (f)(3)(C) of  
54 this rule.

55 (3) Request for Certification; Filing; Service;  
56 Contents.

57 (A) A request for certification shall be filed,  
58 within the time specified by 28 U.S.C. § 158(d)(2), with the  
59 clerk of the court in which the matter is pending.

60 (B) Notice of the filing of a request for  
61 certification shall be served in the manner required for service  
62 of a notice of appeal under Rule 8004.

63 (C) A request for certification shall include  
64 the following:

65 (i) the facts necessary to understand the  
66 question presented;

67 (ii) the question itself;

68 (iii) the relief sought;

69                                    (iv) the reasons why the appeal should  
70                                    be allowed and is authorized by statute or rule, including why  
71                                    a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)  
72                                    exists; and

73                                    (v) an attached copy of the judgment,  
74                                    order, or decree complained of and any related opinion or  
75                                    memorandum.

76                                    (D) A party may file a response to a request  
77                                    for certification or a cross request within 10 days after the  
78                                    notice of the request is served, or another time fixed by the  
79                                    court.

80                                    (E) Rule 9014 does not govern a request,  
81                                    cross request, or any response. The matter shall be submitted  
82                                    without oral argument unless the court otherwise directs.

83                   (F) A certification of an appeal under 28  
84                   U.S.C. § 158(d)(2) shall be made in a separate document  
85                   served on the parties.

86                   (4) Certification on Court's Own Initiative.

87                   (A) A certification of an appeal on the court's  
88                   own initiative under 28 U.S.C. § 158(d)(2) shall be made in  
89                   a separate document served on the parties in the manner  
90                   required for service of a notice of appeal under Rule 8004.  
91                   The certification shall be accompanied by an opinion or  
92                   memorandum that contains the information required by  
93                   subdivision (f)(3)(C)(i)-(iv) of this rule.

94                   (B) A party may file a supplementary short  
95                   statement of the basis for certification within 10 days after the  
96                   certification.

97                   (5) Duties of Parties After Certification. A  
98                   petition for permission to appeal in accordance with F. R.

130 FEDERAL RULES OF BANKRUPTCY PROCEDURE

99        App. P. 5 shall be filed no later than 30 days after a  
100        certification has become effective as provided in subdivision  
101        (f)(1).

**COMMITTEE NOTE**

Subdivision (e) is amended by redesignating the subdivision as (e)(1) and adding new subdivision (e)(2). Subdivision (e)(2) explicitly recognizes the district court's authority to transfer an appeal to the bankruptcy appellate panel on two conditions: first, all of the parties to the appeal must have agreed to request the withdrawal of the election to have the district court hear the appeal; and, second, the district court must decide whether to grant the request for withdrawal. The district court has discretion either to keep the case or transfer it to the bankruptcy appellate panel, which will prevent strategic behavior by parties and avoid the wasting of judicial resources.

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative under subdivision (f)(4), or in response to a request of a party or a majority of the appellants and appellees (if any) under subdivision (f)(3). Certification also can be made by all of the appellants and appellees under subdivision (f)(2)(B). Under

subdivision (f)(1), certification is effective only when a timely appeal is commenced under subdivision (a) or (b), and a notice of appeal has been timely filed under Rule 8002. These actions will provide sufficient notice of the appeal to the circuit clerk, so the rule dispenses with the uncodified temporary procedural requirements set out in § 1233 (b)(4) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8.

The rule adopts a bright-line test for identifying the court in which a matter is pending. Under subdivision (f)(2), the bright-line chosen is the “docketing” under Rule 8007(b) of an appeal of an interlocutory order or decree under 28 U.S.C. § 158(a)(2) or a final judgment, order or decree under 28 U.S.C. § 158(a)(1), or the granting of leave to appeal any other interlocutory judgment, order or decree under 28 U.S.C. § 158(a)(3), whichever is earlier.

To ensure that parties are aware of a certification, the rule requires either that it be made on the Official Form (if being made by all of the parties to the appeal) or on a separate document (whether the certification is made on the court’s own initiative or in response to a request by a party). This is particularly important because the rule adopts the bankruptcy practice established by Rule 8001(a) and (b) of requiring a notice of appeal in every instance, including interlocutory orders, of appeals from bankruptcy court orders, judgments, and decrees. Because this requirement is satisfied by filing the notice of appeal that takes the appeal to the district court or bankruptcy appellate panel in the first instance, the rule does not require a separate notice of appeal if a certification occurs after a district court or bankruptcy appellate panel decision.





7 court for cause shown may at any time in its discretion (1)  
8 with or without motion or notice order the period enlarged if  
9 the request therefor is made before the expiration of the  
10 period originally prescribed or as extended by a previous  
11 order or (2) on motion made after the expiration of the  
12 specified period permit the act to be done where the failure to  
13 act was the result of excusable neglect.

14 (2) *Enlargement Not Permitted.* The court may  
15 not enlarge the time for taking action under Rules 1007(d),  
16 2003(a) and (d), 7052, 9023, and 9024.

17 (3) *Enlargement Limited Governed By Other*  
18 *Rules.* The court may enlarge the time for taking action under  
19 Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a),  
20 4007(c), 4008(a), 8002, and 9033, only to the extent and  
21 under the conditions stated in those rules. In addition, the  
22 court may enlarge the time to file the statement required under



23 Rule 1007(b)(7), and to file schedules and statements in a  
24 small business case under § 1116(3) of the Code, only to the  
25 extent and under the conditions stated in Rule 1007(c).

26 (c) REDUCTION.

27 \* \* \* \* \*

28 (2) *Reduction Not Permitted.* The court may not  
29 reduce the time for taking action under ~~pursuant to~~ Rules  
30 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2),  
31 4003(a), 4004(a), 4007(c), 4008(a), 8002, and 9033(b). In  
32 addition, the court may not reduce the time under Rule  
33 1007(c) to file the statement required by Rule 1007(b)(7).

34 \* \* \* \* \*

#### COMMITTEE NOTE

Subdivision (b)(3) is amended to implement § 1116(3) of the Code, as amended by the 2005 amendments, which places specific limits on the extension of time for filing schedules and statements of financial affairs in a small business case.

Subdivisions (b)(3) and (c)(2) are amended to provide that enlargement or reduction of the time to file the statement of completion of a personal financial management course required by Rule 1007(b)(7) are governed by Rule 1007(c). Likewise, the amendments to subdivisions (b)(3) and (c)(2) recognize that the enlargement of time to file a reaffirmation agreement is governed by Rule 4008(a), and that reduction of the time provided under that rule is not permitted.

Other amendments are stylistic.

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Changes Made After Publication:

Subdivision (b)(3) was amended to provide that Rule 9006 does not govern the enlargement of time to file a reaffirmation agreement, the statement required under Rule 1007(b)(7), or the time to file schedules and statements of financial affairs in small business cases. The title of subdivision (b)(3) was also amended to more accurately describe the operation of the provision. Subdivision (c)(2) was amended to recognize that the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7).

**Rule 9009. Forms**

- 1            Except as otherwise provided in Rule 3016(d), the ~~The~~  
2            Official Forms prescribed by the Judicial Conference of the

3 United States shall be observed and used with alterations as  
4 may be appropriate. Forms may be combined and their  
5 contents rearranged to permit economies in their use. The  
6 Director of the Administrative Office of the United States  
7 Courts may issue additional forms for use under the Code.  
8 The forms shall be construed to be consistent with these rules  
9 and the Code.

#### COMMITTEE NOTE

The rule is amended to provide that a plan proponent in a small business chapter 11 case need not use an Official Form of a plan of reorganization and disclosure statement. The use of those forms is optional, and under Rule 3016(d) the proponent may submit a plan and disclosure statement in those cases that does not conform to the Official Forms.

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#### Changes Made After Publication:

No changes were made after publication.

B. Proposed Technical Amendments to Bankruptcy Rules 7012, 7022, 7023.1, and 9024 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference:

**The Advisory Committee recommends that the Standing Committee approve the following technical amendments to the Bankruptcy Rules without publication and submit them to the Judicial Conference.**

*1. Synopsis of Proposed Technical Amendments.*

- (a) **Rule 7012** is amended to conform to the changes made by the Civil Rules Restyling Project.
- (b) **Rule 7022** is amended to conform to the changes made by the Civil Rules Restyling Project.
- (c) **Rule 7023.1** is amended to conform to the changes made by the Civil Rules Restyling Project.
- (d) **Rule 9024** is amended to conform to the changes made by the Civil Rules Restyling Project.



2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

11 on the bankruptcy judge's order except with the express  
12 consent of the parties.

**COMMITTEE NOTE**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

**Rule 7022. Interpleader**

1 Rule ~~22(1)~~(a) F.R.Civ.P. applies in adversary  
2 proceedings. This rule supplements – and does not limit – the  
3 joinder of parties allowed by Rule 7020.

**COMMITTEE NOTE**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

**Rule 7023.1. Derivative Proceedings by Shareholders  
Actions**

1 Rule 23.1 F.R.Civ.P. applies in adversary proceedings.

**COMMITTEE NOTE**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

**Rule 9024. Relief from Judgment or Order**

1           Rule 60 F.R.Civ.P. applies in cases under the Code  
2           except that (1) a motion to reopen a case under the Code or  
3           for the reconsideration of an order allowing or disallowing a  
4           claim against the estate entered without a contest is not  
5           subject to the one year limitation prescribed in Rule 60 ~~(b)~~ (c),  
6           (2) a complaint to revoke a discharge in a chapter 7  
7           liquidation case may be filed only within the time allowed by  
8           § 727(e) of the Code, and (3) a complaint to revoke an order  
9           confirming a plan may be filed only within the time allowed  
10          by § 1144, § 1230, or § 1330.

**COMMITTEE NOTE**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.



B. Proposed Technical Amendments to Bankruptcy Rules 7012, 7022, 7023.1, and 9024 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference:

**The Advisory Committee recommends that the Standing Committee approve the following technical amendments to the Bankruptcy Rules without publication and submit them to the Judicial Conference.**

*1. Synopsis of Proposed Technical Amendments.*

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- (b) **Rule 7022** is amended to conform to the changes made by the Civil Rules Restyling Project.
- (c) **Rule 7023.1** is amended to conform to the changes made by the Civil Rules Restyling Project.
- (d) **Rule 9024** is amended to conform to the changes made by the Civil Rules Restyling Project.



2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

11 on the bankruptcy judge's order except with the express  
12 consent of the parties.

**COMMITTEE NOTE**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

**Rule 7022. Interpleader**

1 Rule ~~22(1)(a)~~(a) F.R.Civ.P. applies in adversary  
2 proceedings. This rule supplements – and does not limit – the  
3 joinder of parties allowed by Rule 7020.

**COMMITTEE NOTE**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

**Rule 7023.1. Derivative Proceedings by Shareholders  
Actions**

1 Rule 23.1 F.R.Civ.P. applies in adversary proceedings.

**COMMITTEE NOTE**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

**Rule 9024. Relief from Judgment or Order**

1           Rule 60 F.R.Civ.P. applies in cases under the Code  
2           except that (1) a motion to reopen a case under the Code or  
3           for the reconsideration of an order allowing or disallowing a  
4           claim against the estate entered without a contest is not  
5           subject to the one year limitation prescribed in Rule 60 ~~(b)~~ (c),  
6           (2) a complaint to revoke a discharge in a chapter 7  
7           liquidation case may be filed only within the time allowed by  
8           § 727(e) of the Code, and (3) a complaint to revoke an order  
9           confirming a plan may be filed only within the time allowed  
10          by § 1144, § 1230, or § 1330.

**COMMITTEE NOTE**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

E. Proposed Amendments to Official Forms 1, 3A, 3B, 4, 5, 6, 7, 9, 10, 16A, 18, 19, 21, 22A, 22B, 22C, 23, and 24, new Official Forms 25A, 25B, 25C, and 26, and Exhibit D to Official Form 1 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference.

**The Advisory Committee recommends that the Standing Committee approve Official Forms 1, 3A, 3B, 4, 5, 6, 7, 9, 10, 16A, 18, 19, 21, 22A, 22B, 22C, 23, and 24 as set forth below for submission to the Judicial Conference with a request that they be made effective December 1, 2007.**

**The Advisory Committee recommends that the Standing Committee approve new Official Forms 25A, 25B, 25C, and 26 as set forth below for submission to the Judicial Conference with a request that they be made effective December 1, 2008.**

**The Advisory Committee recommends that the Standing Committee approve the amendment to Exhibit D to Official Form 1 as set forth below for submission to the Judicial Conference with the request that it be made effective December 1, 2009.**

1. *Synopsis of Proposed Amendments and New Forms.*

Proposed amendments to 18 Official Forms, recommended for adoption in December 2007, four new Official Forms recommended for adoption in December 2008, and an Exhibit to an Official Form recommended for adoption in December 2009, are summarized below. The summaries describe the historical changes that were approved in 2005 and 2006 to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, if applicable to the form, and then describe the comments received and the changes recommended by the Advisory Committee. The forms and committee notes follow the summary.

(a) *Official Form 1, Voluntary Petition –*

As a result of the 2005 Act, the voluntary petition was amended to include identifying check boxes for newly established categories of debtors, and a new Exhibit D that requires the debtor to provide a more specific response regarding compliance with prepetition credit counseling obligation and the consequences of failing to meet those requirements. The form was also amended to require the disclosure of all names used by the debtor in the past eight years rather than the past six years.

Changes Made After Publication:

The form was amended to include a statement below the signature of the debtor's attorney indicating that the signature constitutes a certification that the attorney has no knowledge that the information is incorrect. This implements § 707(b)(4)(D) of the Code. The form was also amended to change the word "Statement" to "Certification" at the bottom of page 2 of the form for debtors who are tenants under residential leases, and to provide such debtors with a checkbox to indicate service of the certification upon the landlord, if appropriate. The asset and liability

ranges at the bottom of page 1 were revised to accommodate the collection of statistics on the workload of the courts. A reference to Form 19B in the Non-Attorney Bankruptcy Petition Preparer box was changed to Form 19.

Proposed changes to Exhibit D to Form 1 are discussed separately below.

*(b) Official Form 3A, Application to Pay Filing Fee in Installments –*

The form was amended to direct the debtor to state that no additional payments will be made to an attorney or any other person in connection with the case until all installment payments of the filing fee have been made.

Changes Made After Publication:

No changes were made after publication.

*(c) Official Form 3B, Application for Waiver of Chapter 7 Filing Fee –*

The form was adopted as a new form to implement the provision in the 2005 Amendments that authorizes the waiver of filing fees.

Changes Made After Publication:

No changes were made after publication.

*(d) Official Form 4, List of Creditors Holding 20 Largest Unsecured Claims –*

The form was amended to direct that the name and address of a minor child not be disclosed on the list of the 20 largest unsecured creditors in a case.

Changes Made After Publication:

The form was amended to include an example in the instruction that references to minors should not include their full name and address.

*(e) Official Form 5, Involuntary Petition –*

The form was amended to require the disclosure of all names known to be used by the debtor in the past eight years rather than the past six years. Check boxes to identify the debtor as a health care business or clearing bank were also added. The portion of the form labeled “Information Regarding Debtor” was amended to facilitate the collection of statistical information about the debtor.

Changes Made After Publication:

The word “by” was inserted between the words “debtor” and “or” in the box concerning transfers of claims.

*(f) Official Form 6, Schedules –*

The schedules were amended to direct that the name and address of a minor child not be disclosed. They were also amended to facilitate the collection of statistical information to enable the Director of the Administrative Courts to fulfill a data-reporting obligation created by the 2005 Amendments.

Changes Made After Publication:

Schedules B, and D through H were amended to include an example in the instruction that references to minors should not include their full name and address. Schedules I and J are also amended to include a statement advising debtors that the income and expense amounts on those schedules may differ from the income and expense amounts set out on the means test forms. The instructions for carrying information from Schedules E and F to the Statistical Summary of Certain Liabilities and Related Data were revised to clarify that all individual debtors with primarily consumer debts should enter the information. The Declaration was revised to clarify the reference to page totals.

*(g) Official Form 7, Statement of Financial Affairs –*

The form was amended to provide that the name of a minor should not be disclosed. The form was also amended to include an explicit cross reference to Bankruptcy Rule 1007(m) which contains directions about the identification of persons authorized to receive notices on behalf of a minor child. The form also includes amendments to obtain information from the debtor about part-time employment income, transfers that may be subject to recovery as preferences and fraudulent conveyances, and changes to reflect extensions of reach back periods included in the 2005 amendments to the Code.

Changes Made After Publication:

The form was amended to include an example in the instruction that references to minors should not include their full name and address.

*(h) Official Form 9, Notice of Meeting of Creditors –*

Official Form 9A-I are the forms used to give notice of the commencement of the case and the deadlines for a variety of actions by creditors in the case. The forms differ slightly according to the nature of the debtor (individual, joint debtor, corporation) and the chapter under which the case is proceeding. All versions of the form were revised to implement § 1514 added to the Code in 2005 by advising creditors with a foreign address that a different deadline for



filing claims may apply to them, and including a statement advising them to consult with an attorney. Other guiding statements were added to the explanation portion of the form to alert debtors and others of the impact on the automatic stay of serial filings and the changes in the availability and timing of the discharge in the chapter 11 cases of individuals.

Changes Made After Publication:

The references to a “foreign creditor” in all versions of Form 9 were changed to a “creditor with a foreign address.” The missing title for the deadline for filing a complaint to determine the dischargeability of a debt was restored to Form 9I.

*(i) Official Form 10, Proof of Claim –*

The form was amended to reflect the changes in the priority scheme made by the 2005 amendments to the Code. It was also amended to provide more accurate addresses for the transmittal of payments and notices, as well as to indicate that a particular proof of claim has been replaced. The Instructions and Definitions portions of the form were updated to conform to the new definitions and requirements adopted by the 2005 Amendments. In addition, the form and its instructions as published were reformatted based on the experiences of creditors and trustees using it and a definition of “redacted” was added in conformity with Rule 9037.

Changes Made After Publication:

The language in the Instructions and Definitions portions of the form were reformatted and an erroneous instruction limiting the length of attachments was removed.

*(j) Official Form 16A, Caption (Full) –*

The form was amended to require the disclosure of all names used by the debtor in the past eight years rather than six years. It was also amended to direct the use of only the last four digits of an individual debtor’s tax-identification number.

Changes Made After Publication:

No changes were made after publication.

*(k) Official Form 18, Discharge of Debtor –*

The form was amended to require the disclosure of all names used by the debtor in the past eight years rather than six years. It was also amended to direct the use of only the last four digits of an individual debtor’s tax-identification number. The explanation portion of the Form were amended to reflect the changes to the Code governing the nondischargeability of certain obligations.

Changes Made After Publication:

No changes were made after publication.

- (l) *Official Forms 19A, Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer, and 19B, Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer –*

In 2005, Official Form 19 was designated as Form 19A and the “certification” made by the non-attorney bankruptcy petition preparer was renamed a “declaration.” The form was also amended to include material mandated by the 2005 Act. Official Form 19B, new in 2005, was created to satisfy the notice a non-attorney bankruptcy petition preparer must give under the 2005 Act.

Changes Made After Publication:

Forms 19A and 19B were consolidated into a single form designated as Official Form 19.

- (m) *Official Form 21, Statement of Social Security Number or Individual Taxpayer Identification Number –*

The form was amended to direct debtors who do not have a social-security number to furnish a taxpayer-identification number on the form.

Changes Made After Publication:

No changes were made after publication.

- (n) *Official Form 22A, Chapter 7 Statement of Current Monthly and Means-Test Calculation, 22B, Chapter 11 Statement of Current Monthly Income, and 22C, Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income –*

Official Form 22A, 22B, and 22C, commonly known as the means-test forms were created in 2005 for use by individual debtors in voluntary cases under chapters 7, 11, and 13, respectively. The forms are extensive, and generally require the debtor provide the information necessary to calculate the debtor’s current monthly income. The chapter 7 version of the form was designed primarily to determine whether the debtor’s filing was presumptively abusive under § 707(b) of the Code. In chapters 11 and 13, the forms’ determination of current monthly income becomes a starting point for calculating disposable income under the plan. Several stylistic changes making the forms more consistent with statutory language were approved in 2006, and the revised versions were published in August 2006.

#### Changes Made After Publication:

There were a number of changes to the means-test forms. The changes largely amend the language of the form to follow either exactly or more closely the language of §§ 101(10A), 707(b), and 1325 of the Code, the primary operative provisions of the means test. A checkbox has been added to Form 22A for individual debtors who contend that their debts are not primarily consumer debts. The result is that all individual debtors filing under chapter 7 will have to submit Form 22A. However, a debtor who asserts that his or her debts are not primarily consumer debts, need only check the appropriate box and sign and file the form. If the court later determines the debtor's debts are primarily consumer debts, the debtor will have to complete the rest of the form. To the extent that other changes were made in the means-test forms, they are intended to implement fundamental determinations made by the Advisory Committee such as that the means test provisions do not permit double counting of expenses in determining a debtor's disposable income. A detailed description of the Advisory Committee's recommendations is contained at pages 8-16 of the draft minutes of its March 2007 meeting. The minutes are set forth in the attachments to Section III of this Report.

#### *(o) Official Form 23, Debtor's Certification of Completion of Instructional Course Concerning Financial Management –*

The form was approved as a new form in 2005. It was created to be used as the debtor's certification of the completion of an instructional course in personal financial management as required by §§ 727 and 1328 of the Code.

#### Changes Made After Publication:

The word "Postpetition" is inserted into the title to clarify that the form refers to the course taken by the debtor after the commencement of the case. The directions to the form are revised to note that the form must be completed by individual debtors in chapter 11 cases in which § 1141(d)(3) applies.

#### *(p) Official Form 24, Certification to Court of Appeals by All Parties –*

The form was approved as a new form in 2005. It is the form of a certification to the court of appeals by all parties in a case. It implements the 2005 amendments to 28 U.S.C. § 158(d) (2) which permit direct appeal to the courts of appeals.

#### Changes Made After Publication:

The form was amended to include a signature line for the appellee and the attorney for the appellee.

#### *(q) Official Form 25A, Form Plan of Reorganization –*

The form is new. It is a form plan of reorganization for use in small business chapter 11 cases, thereby implementing § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Changes Made After Publication:

The Form was amended to add a new article that requires the plan proponent to state the means by which the plan will be implemented. Several stylistic changes were also made to the Form.

(r) *Official Form 25B, Form Disclosure Statement –*

Official Form 25B is new. It is a form disclosure statement for use in small business chapter 11 cases, thereby implementing § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. It is intended for use in conjunction with the form plan of reorganization, Official Form 25A.

Changes Made After Publication:

No changes were made to the form. The disclosure statement already included a section to describe the implementation of the plan, so the addition of that section to Official Form 25A does not require a change to Official Form 25B.

(s) *Official Form 25C, Small Business Monthly Operation Report –*

Official Form 25C is new. It is a form for small business chapter 11 debtors to provide periodic reports on the operations and profitability of the debtor during the case as required by § 308 of the Code. It implements §§ 434 and 435 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Changes Made After Publication:

Two new questions were inserted into the form. The first asks whether anyone had made any investments in the debtor during the prior month, and the second asks the debtor to set out the change in the debtor's cash position from the beginning to the end of the month. Other questions were renumbered to accommodate the addition of the two new questions.

(t) *Official Form 26, Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Estate of [Name of Debtor] Holds a Substantial Controlling Interest –*

Official Form 26 is new. It is a report that discloses the profitability of entities in which the bankruptcy estate holds a substantial or controlling interest. It is the form that proposed Rule 2015.3 requires the debtor or trustee to file.

Changes Made After Publication:

No changes were made after publication.

2. *Text of Proposed Amendments to Official Forms 1, 3A, 3B, 4, 5, 6, 7, 9, 10, 16A, 18, 19, 21, 22A, 22B, 22C, 23, and 24, new Official Forms 25A, 25B, 25C, and 26*

FORMS SEPARATELY ATTACHED

**B1 (Official Form 1) (12/07)**

United States Bankruptcy Court DISTRICT OF _____						Voluntary Petition				
Name of Debtor (if individual, enter Last, First, Middle):						Name of Joint Debtor (Spouse) (Last, First, Middle):				
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):						All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):				
Last four digits of Social-Security/Complete EIN or other Tax-I.D. No. (if more than one, state all):						Last four digits of Social-Security/Complete EIN or other Tax-I.D. No. (if more than one, state all):				
Street Address of Debtor (No. and Street, City, and State):						Street Address of Joint Debtor (No. and Street, City, and State):				
ZIP CODE						ZIP CODE				
County of Residence or of the Principal Place of Business:						County of Residence or of the Principal Place of Business:				
Mailing Address of Debtor (if different from street address):						Mailing Address of Joint Debtor (if different from street address):				
ZIP CODE						ZIP CODE				
Location of Principal Assets of Business Debtor (if different from street address above):						ZIP CODE				
<b>Type of Debtor</b> (Form of Organization) (Check one box.)		<b>Nature of Business</b> (Check one box.)				<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box.)				
<input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)		<input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other				<input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13  <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding				
		<b>Tax-Exempt Entity</b> (Check box, if applicable.)				<b>Nature of Debts</b> (Check one box.)				
		<input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).				<input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input type="checkbox"/> Debts are primarily business debts.				
<b>Filing Fee</b> (Check one box.)						<b>Chapter 11 Debtors</b>				
<input type="checkbox"/> Full Filing Fee attached.						<input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).				
<input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.						<input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).				
<input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.						<b>Check if:</b> <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,190,000.				
						<b>Check all applicable boxes:</b> <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).				
<b>Statistical/Administrative Information</b>										<b>THIS SPACE IS FOR COURT USE ONLY</b>
<input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors.										
<input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.										
<b>Estimated Number of Creditors</b> <input type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> Over 100,000										
<b>Estimated Assets</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion										
<b>Estimated Liabilities</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion										

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s):	
<b>All Prior Bankruptcy Cases Filed Within Last 8 Years</b> (If more than two, attach additional sheet.)			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor</b> (If more than one, attach additional sheet.)			
Name of Debtor:		Case Number:	Date Filed:
District:		Relationship:	Judge:
<p style="text-align: center;"><b>Exhibit A</b></p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>		<p style="text-align: center;"><b>Exhibit B</b></p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).</p> <p>X _____ Signature of Attorney for Debtor(s) (Date)</p>	
<b>Exhibit C</b>			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?			
<input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition.			
<input type="checkbox"/> No.			
<b>Exhibit D</b>			
(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)			
<input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition.			
If this is a joint petition:			
<input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
<b>Information Regarding the Debtor - Venue</b> (Check any applicable box.)			
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.			
<input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.			
<input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
<b>Certification by a Debtor Who Resides as a Tenant of Residential Property</b> (Check all applicable boxes.)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)			
_____			
(Name of landlord that obtained judgment)			
_____			
(Address of landlord)			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and			
<input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.			
<input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

**Voluntary Petition**  
*(This page must be completed and filed in every case.)*

Name of Debtor(s):

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X \_\_\_\_\_  
 Signature of Debtor

X \_\_\_\_\_  
 Signature of Joint Debtor

\_\_\_\_\_  
 Telephone Number (if not represented by attorney)

\_\_\_\_\_  
 Date

**Signature of a Foreign Representative**

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X \_\_\_\_\_  
 (Signature of Foreign Representative)

\_\_\_\_\_  
 (Printed Name of Foreign Representative)

\_\_\_\_\_  
 Date

**Signature of Attorney\***

X \_\_\_\_\_  
 Signature of Attorney for Debtor(s)

\_\_\_\_\_  
 Printed Name of Attorney for Debtor(s)

\_\_\_\_\_  
 Firm Name

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Telephone Number

\_\_\_\_\_  
 Date

\*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

**Signature of Non-Attorney Bankruptcy Petition Preparer**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

\_\_\_\_\_  
 Printed Name and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
 Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

\_\_\_\_\_  
 Address

X \_\_\_\_\_

\_\_\_\_\_  
 Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X \_\_\_\_\_  
 Signature of Authorized Individual

\_\_\_\_\_  
 Printed Name of Authorized Individual

\_\_\_\_\_  
 Title of Authorized Individual

\_\_\_\_\_  
 Date



## 2005-2007 COMMITTEE NOTE

The form is amended to implement amendments to the Bankruptcy Code contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005) (“BAPCPA”). The period for which the debtor must provide all names used and information about any prior bankruptcy cases is now eight years to match the required time between the granting of discharges to the same debtor in § 727(a)(8) of the Code as amended in 2005. In conformity with Rule 9037, the debtor is directed to provide only the last four digits of any individual’s tax-identification number.

The box indicating the debtor’s selection of a chapter under which to file the case is amended to delete “Sec. 304 - Case ancillary to foreign proceeding” and replace it with “Chapter 15 Petition for Recognition of a Foreign Main Proceeding” and “Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding” reflecting the 2005 repeal of § 304 and enactment of chapter 15 of the Code. A statement of venue to be used in a chapter 15 case also is added on page 2 of the form.

The section labeled “Type of Debtor” is amended to include, below the checkbox for “Individual or Joint,” a direction to “See Exhibit D on page 2 of this form.” This addition alerts individual debtors that Exhibit D on page 2 of the form applies to them. Exhibit D, more fully described below, addresses the prepetition credit counseling requirements added to the Code by BAPCPA. The subtitle, “Form of Organization,” is added, and this section also is revised to make clear that a limited liability corporation (“LLC”) or limited liability partnership (“LLP”) should identify itself as a “corporation.”

The form also is amended in several ways to assist the courts in evaluating their workload and fulfilling the statistical reporting requirements of 28 U.S.C. § 159, enacted as part of BAPCPA. Accordingly, a new section of the form labeled “Nature of Business,” is added that contains both existing checkboxes that identify certain types of debtors for which the Bankruptcy Code provides special treatment, such as stockbrokers and railroads, and a new checkbox for a “health care business” for which the 2005 amendments to the Code include specific requirements. This section of the form also contains a checkbox for single asset real estate debtors, so they can be identified at the time of filing. All other businesses will mark the checkbox labeled “Other.” Another new section titled

“Tax-Exempt Entity” contains a checkbox to be used by qualified organizations. The Judicial Conference of the United States and the Administrative Office of the United States Courts will use this information in preparing statistical reports and analyses for Congress.

A checkbox also is added for an individual debtor to indicate that the debtor is applying for a waiver of the filing fee, to implement the 2005 enactment of 28 U.S.C. § 1930(f) authorizing the bankruptcy court to waive the filing fee in certain circumstances. The description directs the debtor to the Official Form for the application that must be filed for the court’s consideration.

The section labeled “Nature of Debts” is amended to state the statutory definition of a “consumer debt” and to modify both the consumer and business categories by adding the word “primarily” to both choices to make it clearer to individual debtors that “business” may be the appropriate choice if personal debts have been incurred to finance a business venture.

Although the 2005 Act eliminated from the Code any option to elect to be treated as a “small business” in a chapter 11 case, new provisions for “small business” debtors added by BAPCPA make it desirable to identify eligible debtors at the outset of the case. Accordingly, the section of the form labeled “Chapter 11 Small Business” is revised and renamed “Chapter 11 Debtors” for this purpose. Chapter 11 debtors that meet the definition of “small business debtor” in § 101 of the Code are directed to identify themselves in this section of the form. Chapter 11 debtors whose aggregate noncontingent debts owed to non-insiders or affiliates are less than \$2,190,000 are directed to identify themselves in this section. A third part of this section attempts to identify chapter 11 cases that are filed as pre-packaged cases, using criteria taken from § 1126(b) of the Code. Identifying “pre-packs” at filing will assist judges and court staff to manage these cases appropriately.

The statistical information concerning the number of creditors and estimated assets and liabilities is revised to provide more detail.

BAPCPA also added a new § 109(h) to the Code. To implement this provision, a section labeled “Exhibit D” is inserted on page 2 of the form, and a separate Exhibit D is added. These additions will enable individual debtors to certify that they have received budget and credit counseling prior to filing, as required by § 109(h), or request a temporary waiver of, or exemption from, the requirement, if they meet the statutory requirements for such relief. Exhibit D includes directions to attach required documentation or, if the debtor requests a temporary waiver or an exemption, a motion for a determination by the court. Exhibit D also states the requirement that all individual debtors must obtain a briefing from an approved credit counseling agency before filing a bankruptcy case, unless one of the very limited exceptions applies, and further states the

consequences that may be faced by any debtor who fails to comply.

Space is provided on page 2 for a debtor who is a tenant of residential real property to certify whether the debtor's landlord has a judgment against the debtor for possession of the premises, whether under applicable nonbankruptcy law the debtor would be permitted to cure the monetary default, and whether the debtor has made the appropriate deposit with the court. This addition to the form implements § 362(l) which was added to the Code in 2005. And a box is provided that allows the debtor to certify that s/he has served the landlord with the certification as required by § 362(l)(1).

The signature sections and the declaration under penalty of perjury by an individual debtor concerning the notice received about bankruptcy relief, the declaration under penalty of perjury by a bankruptcy petition preparer, and the attorney signature box are amended to include new material mandated by the 2005 Act. The attorney signature box is also amended to remind the attorney that in a case in which § 707(b)(4)(D) applies, that the signature constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect. A signature section is also provided for a representative of a foreign proceeding.

# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## APPLICATION TO PAY FILING FEE IN INSTALLMENTS

- In accordance with Fed. R. Bankr. P. 1006, I apply for permission to pay the filing fee amounting to \$ \_\_\_\_\_ in installments.
- I am unable to pay the filing fee except in installments.
- Until the filing fee is paid in full, I will not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.
- I propose the following terms for the payment of the Filing Fee.\*

\$ \_\_\_\_\_ Check one  With the filing of the petition, or  
 On or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\* The number of installments proposed shall not exceed four (4), and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. Fed. R. Bankr. P. 1006(b)(2).

- I understand that if I fail to pay any installment when due, my bankruptcy case may be dismissed and I may not receive a discharge of my debts.

Signature of Attorney \_\_\_\_\_ Date \_\_\_\_\_

Signature of Debtor \_\_\_\_\_ Date \_\_\_\_\_  
(In a joint case, both spouses must sign.)

Name of Attorney \_\_\_\_\_

Signature of Joint Debtor (if any) \_\_\_\_\_ Date \_\_\_\_\_

### DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section; and (4) I will not accept any additional money or other property from the debtor before the filing fee is paid in full.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer \_\_\_\_\_

Social-Security No. (Required by 11 U.S.C. § 110.) \_\_\_\_\_

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs the document.*

Address \_\_\_\_\_

x \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_ Date

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

United States Bankruptcy Court
District Of

In re Debtor

Case No.

Chapter

ORDER APPROVING PAYMENT OF FILING FEE IN INSTALLMENTS

IT IS ORDERED that the debtor(s) may pay the filing fee in installments on the terms proposed in the foregoing application.

IT IS ORDERED that the debtor(s) shall pay the filing fee according to the following terms:

\$ Check one With the filing of the petition, or On or before

\$ on or before

\$ on or before

\$ on or before

IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor(s) shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

BY THE COURT

Date:

United States Bankruptcy Judge

2005-2007 COMMITTEE NOTE

The form is amended to direct the debtor to state that, until the filing fee is paid in full, the debtor will not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with the case. The declaration and certification by a non-attorney bankruptcy petition preparer in the form are amended to include material mandated by § 110 of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). The certification by a non-attorney bankruptcy petition preparer is re-named a declaration and also is revised to include material mandated by § 110 of the Code as amended in 2005. The order is amended to provide space for the court to set forth a payment schedule other than the one proposed by the debtor.

**APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
FOR INDIVIDUALS WHO CANNOT PAY THE FILING FEE  
IN FULL OR IN INSTALLMENTS**

The court fee for filing a case under chapter 7 of the Bankruptcy Code is \$299.

If you cannot afford to pay the full fee at the time of filing, you may apply to pay the fee in installments. A form, which is available from the bankruptcy clerk's office, must be completed to make that application. If your application to pay in installments is approved, you will be permitted to file your petition, generally completing payment of the fee over the course of four to six months.

If you cannot afford to pay the fee either in full at the time of filing or in installments, you may request a waiver of the filing fee by completing this application and filing it with the Clerk of Court. A judge will decide whether you have to pay the fee. By law, the judge may waive the fee only if your income is less than 150 percent of the official poverty line applicable to your family size and you are unable to pay the fee in installments. You may obtain information about the poverty guidelines at [www.uscourts.gov](http://www.uscourts.gov) or in the bankruptcy clerk's office.

**Required information.** Complete all items in the application, and attach requested schedules. Then sign the application on the last page. If you and your spouse are filing a joint bankruptcy petition, you both must provide information as requested and sign the application.

United States Bankruptcy Court
District of \_\_\_\_\_

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

Case No. \_\_\_\_\_
(if known)

APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE
FOR INDIVIDUALS WHO CANNOT PAY THE FILING FEE IN FULL OR IN INSTALLMENTS

Part A. Family Size and Income

1. Including yourself, your spouse, and dependents you have listed or will list on Schedule I (Current Income of Individual Debtors(s)), how many people are in your family? (Do not include your spouse if you are separated AND are not filing a joint petition.) \_\_\_\_\_

2. Restate the following information that you provided, or will provide, on Line 16 of Schedule I. Attach a completed copy of Schedule I, if it is available.

Total Combined Monthly Income (Line 16 of Schedule I): \$ \_\_\_\_\_

3. State the monthly net income, if any, of dependents included in Question 1 above. Do not include any income already reported in Item 2. If none, enter \$0.

\$ \_\_\_\_\_

4. Add the "Total Combined Monthly Income" reported in Question 2 to your dependents' monthly net income from Question 3.

\$ \_\_\_\_\_

5. Do you expect the amount in Question 4 to increase or decrease by more than 10% during the next 6 months? Yes \_\_\_ No \_\_\_

If yes, explain.

Part B. Monthly Expenses

6. EITHER (a) attach a completed copy of Schedule J (Schedule of Monthly Expenses), and state your total monthly expenses reported on Line 18 of that Schedule, OR (b) if you have not yet completed Schedule J, provide an estimate of your total monthly expenses.

\$ \_\_\_\_\_

7. Do you expect the amount in Question 6 to increase or decrease by more than 10% during the next 6 months? Yes \_\_\_ No \_\_\_

If yes, explain.

Part C. Real and Personal Property

EITHER (1) attach completed copies of Schedule A (Real Property) and Schedule B (Personal Property), OR (2) if you have not yet completed those schedules, answer the following questions.

8. State the amount of cash you have on hand. \$ \_\_\_\_\_

9. State below any money you have in savings, checking, or other accounts in a bank or other financial institution.

Table with 3 columns: Bank or Other Financial Institution, Type of Account such as savings, checking, CD, Amount. Includes two rows for account information.



**B3B (Official Form 3B) (12/07) -- Cont.**

10. State below the assets owned by you. **Do not list ordinary household furnishings and clothing.**

Home	Address: _____ _____	Value: \$ _____ Amount owed on mortgages and liens: \$ _____
Other real estate	Address: _____ _____	Value: \$ _____ Amount owed on mortgages and liens: \$ _____
Motor vehicle	Model/Year: _____ _____	Value: \$ _____ Amount owed: \$ _____
Motor vehicle	Model/Year: _____ _____	Value: \$ _____ Amount owed: \$ _____
Other	Description _____ _____	Value: \$ _____ Amount owed: \$ _____

11. State below any person, business, organization, or governmental unit that owes you money and the amount that is owed.

Name of Person, Business, or Organization that Owes You Money	Amount Owed
_____	\$ _____
_____	\$ _____

**Part D. Additional Information.**

12. Have you paid an **attorney** any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes \_\_\_ No \_\_\_  
If yes, how much have you paid? \$ \_\_\_\_\_
13. Have you promised to pay or do you anticipate paying an **attorney** in connection with your bankruptcy case? Yes \_\_\_ No \_\_\_  
If yes, how much have you promised to pay or do you anticipate paying? \$ \_\_\_\_\_
14. Have you paid **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes \_\_\_ No \_\_\_  
If yes, how much have you paid? \$ \_\_\_\_\_
15. Have you promised to pay or do you anticipate paying **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules?  
Yes \_\_\_ No \_\_\_  
If yes, how much have you promised to pay or do you anticipate paying? \$ \_\_\_\_\_
16. Has anyone paid an attorney or other person or service in connection with this case, on your behalf?  
Yes \_\_\_ No \_\_\_  
If yes, explain.

**B3B (Official Form 3B) (12/07) -- Cont.**

17. Have you previously filed for bankruptcy relief during the past eight years? Yes \_\_\_ No \_\_\_

Case Number (if known)	Year filed	Location of filing	Did you obtain a discharge? (if known)		
_____	_____	_____	Yes ___	No ___	Don't know ___
_____	_____	_____	Yes ___	No ___	Don't know ___

18. Please provide any other information that helps to explain why you are unable to pay the filing fee in installments.

19. I (we) declare under penalty of perjury that I (we) cannot currently afford to pay the filing fee in full or in installments and that the foregoing information is true and correct.

Executed on: \_\_\_\_\_  
Date  
Signature of Debtor  
\_\_\_\_\_  
Date  
Signature of Codebtor

**DECLARATION AND SIGNATURE OF BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer \_\_\_\_\_ Social-Security No. (Required by 11 U.S.C. §110.)  
*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs the document.*

Address \_\_\_\_\_

x \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer Date

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.*  
*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

United States Bankruptcy Court  
District of \_\_\_\_\_

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

Case No. \_\_\_\_\_

**ORDER ON DEBTOR'S APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE**

Upon consideration of the debtor's "Application for Waiver of the Chapter 7 Filing Fee," the court orders that the application be:

GRANTED.

This order is subject to being vacated at a later time if developments in the administration of the bankruptcy case demonstrate that the waiver was unwarranted.

DENIED.

The debtor shall pay the chapter 7 filing fee according to the following terms:

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

Until the filing fee is paid in full, the debtor shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

IF THE DEBTOR FAILS TO TIMELY PAY THE FILING FEE IN FULL OR TO TIMELY MAKE INSTALLMENT PAYMENTS, THE COURT MAY DISMISS THE DEBTOR'S CASE.

SCHEDULED FOR HEARING.

A hearing to consider the debtor's "Application for Waiver of the Chapter 7 Filing Fee" shall be held on \_\_\_\_\_ at \_\_\_\_\_ am/pm at \_\_\_\_\_  
(address of courthouse)

IF THE DEBTOR FAILS TO APPEAR AT THE SCHEDULED HEARING, THE COURT MAY DEEM SUCH FAILURE TO BE THE DEBTOR'S CONSENT TO THE ENTRY OF AN ORDER DENYING THE FEE WAIVER APPLICATION BY DEFAULT.

BY THE COURT:

DATE: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge

2005-2007 COMMITTEE NOTE

This form is new. 28 U.S.C. § 1930(f), enacted as part of the Bankruptcy Abuse and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), provides that “under procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments.” To implement this provision, Fed. R. Bankr. P.1006 adds a new subdivision (c). Official Form 3B is the form referenced in that subdivision, and is to be used by individual chapter 7 debtors when applying for a waiver of the filing fee. A corresponding standard order also is included.



2005-2007 COMMITTEE NOTE

The form is amended to direct that the name of any minor child not be disclosed. The amendment implements § 112 of the Code, which was added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). In addition, the form is amended to add to the reference to Rule 1007(m) a direction to include for noticing purposes the name, address, and legal relationship to the child of “a person described” in that rule. Rule 1007(m) requires the person named to be someone on whom process would be served in an adversary proceeding against the child.

<b>United States Bankruptcy Court</b>  _____ <b>District of</b> _____		<b>INVOLUNTARY PETITION</b>
IN RE (Name of Debtor – If Individual: Last, First, Middle)	ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names.)	
Last four digits of Social-Security or other Individual’s Tax-I.D. No./Complete EIN (If more than one, state all.):		
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code)	MAILING ADDRESS OF DEBTOR (If different from street address)	
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS  <div style="text-align: right;">ZIP CODE</div>	<div style="text-align: right;">ZIP CODE</div>	
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)		
CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED  <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11		
<b>INFORMATION REGARDING DEBTOR (Check applicable boxes)</b>		
<b>Nature of Debts</b> (Check one box.)  Petitioners believe:  <input type="checkbox"/> Debts are primarily consumer debts <input type="checkbox"/> Debts are primarily business debts	<b>Type of Debtor</b> (Form of Organization)  <input type="checkbox"/> Individual (Includes Joint Debtor) <input type="checkbox"/> Corporation (Includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.) _____	<b>Nature of Business</b> (Check one box.)  <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51)(B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other
<b>VENUE</b>  <input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.  <input type="checkbox"/> A bankruptcy case concerning debtor’s affiliate, general partner or partnership is pending in this District.	<b>FILING FEE (Check one box)</b>  <input type="checkbox"/> Full Filing Fee attached  <input type="checkbox"/> Petitioner is a child support creditor or its representative, and the form specified in § 304(g) of the Bankruptcy Reform Act of 1994 is attached. <i>[If a child support creditor or its representative is a petitioner, and if the petitioner files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.]</i>	
<b>PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)</b>		
Name of Debtor	Case Number	Date
Relationship	District	Judge
<b>ALLEGATIONS</b> (Check applicable boxes)  1. <input type="checkbox"/> Petitioner (s) are eligible to file this petition pursuant to 11 U.S.C. § 303 (b). 2. <input type="checkbox"/> The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code. 3.a. <input type="checkbox"/> The debtor is generally not paying such debtor’s debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount; <div style="text-align: center;">or</div> b. <input type="checkbox"/> Within 120 days preceding the filing of this petition, a custodian, other than a trustee receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.		<b>COURT USE ONLY</b>

Name of Debtor \_\_\_\_\_

Case No. \_\_\_\_\_

<b>TRANSFER OF CLAIM</b>		
<input type="checkbox"/> Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).		
<b>REQUEST FOR RELIEF</b>		
Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.		
Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.		
x _____ Signature of Petitioner or Representative (State title)	x _____ Signature of Attorney <span style="float: right;">Date</span>	
Name of Petitioner <span style="float: right;">Date Signed</span>	Name of Attorney Firm (If any)	
Name & Mailing Address of Individual Signing in Representative Capacity	Address  Telephone No.	
x _____ Signature of Petitioner or Representative (State title)	x _____ Signature of Attorney <span style="float: right;">Date</span>	
Name of Petitioner <span style="float: right;">Date Signed</span>	Name of Attorney Firm (If any)	
Name & Mailing Address of Individual Signing in Representative Capacity	Address  Telephone No.	
x _____ Signature of Petitioner or Representative (State title)	x _____ Signature of Attorney <span style="float: right;">Date</span>	
Name of Petitioner <span style="float: right;">Date Signed</span>	Name of Attorney Firm (If any)	
Name & Mailing Address of Individual Signing in Representative Capacity	Address  Telephone No.	
<b>PETITIONING CREDITORS</b>		
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.	Total Amount of Petitioners' Claims	

\_\_\_\_\_ continuation sheets attached



2005-2007 COMMITTEE NOTE

The form has been amended to delete statistical information about the debtor that no longer is required, and to substitute checkboxes similar to those on the voluntary petition form. The form also is amended to add “as to liability or amount” to the language concerning debts that are the subject of a bona fide dispute, in conformity with § 303 of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). The petitioning creditors must now provide, to the extent known to them, all other names used by the debtor during the 8 years, rather than 6 years, before the filing of the petition. In conformity with Rule 9037, the petitioning creditors are directed to provide only the last four digits of any individual’s tax-identification number. A new checkbox is provided for the petitioning creditors to identify the debtor that is a “health care business” as defined in § 101 of the Code, thereby alerting the court and the United States trustee of the necessity under § 333 of the Code to appoint an ombudsman to represent the interests of the patients of the health care business. These amendments also implement the 2005 amendments to the Code. A new checkbox also is provided for a “clearing bank,” which may become a debtor upon the filing of a petition at the direction of the Board of Governors of the Federal Reserve System; this addition conforms to an amendment to § 109(b)(2) of the Code, which was enacted in 2000.

**FORM 6. SCHEDULES**

Summary of Schedules

Statistical Summary of Certain Liabilities and Related Data (28 U.S.C. § 159)

Schedule A - Real Property

Schedule B - Personal Property

Schedule C - Property Claimed as Exempt

Schedule D - Creditors Holding Secured Claims

Schedule E - Creditors Holding Unsecured Priority Claims

Schedule F - Creditors Holding Unsecured Nonpriority Claims

Schedule G - Executory Contracts and Unexpired Leases

Schedule H - Codebtors

Schedule I - Current Income of Individual Debtor(s)

Schedule J - Current Expenditures of Individual Debtors(s)

Unsworn Declaration Under Penalty of Perjury

**GENERAL INSTRUCTIONS:** The first page of the debtor's schedules and the first page of any amendments thereto must contain a caption as in Form 16B. Subsequent pages should be identified with the debtor's name and case number. If the schedules are filed with the petition, the case number should be left blank.

Schedules D, E, and F have been designed for the listing of each claim only once. Even when a claim is secured only in part or entitled to priority only in part, it still should be listed only once. A claim which is secured in whole or in part should be listed on Schedule D only, and a claim which is entitled to priority in whole or in part should be listed on Schedule E only. Do not list the same claim twice. If a creditor has more than one claim, such as claims arising from separate transactions, each claim should be scheduled separately.

Review the specific instructions for each schedule before completing the schedule.

# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors also must complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property			\$		
B - Personal Property			\$		
C - Property Claimed as Exempt					
D - Creditors Holding Secured Claims				\$	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)				\$	
F - Creditors Holding Unsecured Nonpriority Claims				\$	
G - Executory Contracts and Unexpired Leases					
H - Codebtors					
I - Current Income of Individual Debtor(s)					\$
J - Current Expenditures of Individual Debtors(s)					\$
<b>TOTAL</b>			\$	\$	

# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

**This information is for statistical purposes only under 28 U.S.C. § 159.**

**Summarize the following types of liabilities, as reported in the Schedules, and total them.**

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	\$
Student Loan Obligations (from Schedule F)	\$
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$
<b>TOTAL</b>	\$

**State the following:**

Average Income (from Schedule I, Line 16)	\$
Average Expenses (from Schedule J, Line 18)	\$
Current Monthly Income (from Form 22A Line 12; <b>OR</b> , Form 22B Line 11; <b>OR</b> , Form 22C Line 20)	\$

**State the following:**

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		\$
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.	\$	
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		\$
4. Total from Schedule F		\$
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		\$

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

### SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

**Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM

Total ►  
(Report also on Summary of Schedules.)

In re \_\_\_\_\_  
 Debtor

Case No. \_\_\_\_\_  
 (If known)

### SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.  2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.  3. Security deposits with public utilities, telephone companies, landlords, and others.  4. Household goods and furnishings, including audio, video, and computer equipment.  5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.  6. Wearing apparel.  7. Furs and jewelry.  8. Firearms and sports, photographic, and other hobby equipment.  9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.  10. Annuities. Itemize and name each issuer.  11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)				

In re \_\_\_\_\_  
 Debtor

Case No. \_\_\_\_\_  
 (If known)

**SCHEDULE B - PERSONAL PROPERTY**  
 (Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.</p> <p>13. Stock and interests in incorporated and unincorporated businesses. Itemize.</p> <p>14. Interests in partnerships or joint ventures. Itemize.</p> <p>15. Government and corporate bonds and other negotiable and non-negotiable instruments.</p> <p>16. Accounts receivable.</p> <p>17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.</p> <p>18. Other liquidated debts owed to debtor including tax refunds. Give particulars.</p> <p>19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A – Real Property.</p> <p>20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.</p> <p>21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.</p>				

In re \_\_\_\_\_  
 Debtor

Case No. \_\_\_\_\_  
 (If known)

**SCHEDULE B - PERSONAL PROPERTY**  
 (Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.  23. Licenses, franchises, and other general intangibles. Give particulars.  24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.  25. Automobiles, trucks, trailers, and other vehicles and accessories.  26. Boats, motors, and accessories.  27. Aircraft and accessories.  28. Office equipment, furnishings, and supplies.  29. Machinery, fixtures, equipment, and supplies used in business.  30. Inventory.  31. Animals.  32. Crops - growing or harvested. Give particulars.  33. Farming equipment and implements.  34. Farm supplies, chemicals, and feed.  35. Other personal property of any kind not already listed. Itemize.				
_____ continuation sheets attached Total ▶				\$

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)



In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

### SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:  
(Check one box)

- 11 U.S.C. § 522(b)(2)
- 11 U.S.C. § 522(b)(3)

Check if debtor claims a homestead exemption that exceeds \$136,875.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION





In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(if known)

### SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

**Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

**Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

**Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,950\* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

**Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).



In re \_\_\_\_\_,  
 Debtor

Case No. \_\_\_\_\_  
 (if known)

**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**  
 (Continuation Sheet)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY	
Account No.										
Account No.										
Account No.										
Account No.										
Sheet no. ___ of ___ continuation sheets attached to Schedule of Creditors Holding Priority Claims							Subtotals▶ (Totals of this page)	\$	\$	
							Total▶ (Use only on last page of the completed Schedule E. Report also on the Summary of Schedules.)	\$		
							Totals▶ (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)	\$	\$	

In re \_\_\_\_\_, Debtor

Case No. \_\_\_\_\_ (if known)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data..

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.  							
ACCOUNT NO.  							
ACCOUNT NO.  							
ACCOUNT NO.  							
Subtotal ▶							\$
Total ▶							\$
(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)							

\_\_\_\_\_ continuation sheets attached

In re \_\_\_\_\_,  
**Debtor**

Case No. \_\_\_\_\_  
 (if known)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <small>(See instructions above.)</small>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.  							
ACCOUNT NO.  							
ACCOUNT NO.  							
ACCOUNT NO.  							
ACCOUNT NO.  							
Sheet no. ___ of ___ continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal ▶ \$
(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)							Total ▶ \$



In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

In re \_\_\_\_\_,  
**Debtor**

Case No. \_\_\_\_\_  
 (if known)

**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by the debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

In re \_\_\_\_\_,  
**Debtor**

Case No. \_\_\_\_\_  
 (if known)

**SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)**

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S):	AGE(S):
<b>Employment:</b>	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

INCOME: (Estimate of average or projected monthly income at time case filed)	DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)	\$ _____	\$ _____
2. Estimate monthly overtime	\$ _____	\$ _____
3. SUBTOTAL	\$ _____	\$ _____
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ _____	\$ _____
b. Insurance	\$ _____	\$ _____
c. Union dues	\$ _____	\$ _____
d. Other (Specify): _____	\$ _____	\$ _____
5. SUBTOTAL OF PAYROLL DEDUCTIONS	\$ _____	\$ _____
6. TOTAL NET MONTHLY TAKE HOME PAY	\$ _____	\$ _____
7. Regular income from operation of business or profession or farm (Attach detailed statement)	\$ _____	\$ _____
8. Income from real property	\$ _____	\$ _____
9. Interest and dividends	\$ _____	\$ _____
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ _____	\$ _____
11. Social security or government assistance (Specify): _____	\$ _____	\$ _____
12. Pension or retirement income	\$ _____	\$ _____
13. Other monthly income (Specify): _____	\$ _____	\$ _____
14. SUBTOTAL OF LINES 7 THROUGH 13	\$ _____	\$ _____
15. AVERAGE MONTHLY INCOME (Add amounts on lines 6 and 14)	\$ _____	\$ _____
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)	\$ _____	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:  
 \_\_\_\_\_  
 \_\_\_\_\_

In re \_\_\_\_\_,
Debtor

Case No. \_\_\_\_\_
(if known)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

- 1. Rent or home mortgage payment (include lot rented for mobile home) \$
a. Are real estate taxes included? Yes No
b. Is property insurance included? Yes No
2. Utilities: a. Electricity and heating fuel \$
b. Water and sewer \$
c. Telephone \$
d. Other \$
3. Home maintenance (repairs and upkeep) \$
4. Food \$
5. Clothing \$
6. Laundry and dry cleaning \$
7. Medical and dental expenses \$
8. Transportation (not including car payments) \$
9. Recreation, clubs and entertainment, newspapers, magazines, etc. \$
10. Charitable contributions \$
11. Insurance (not deducted from wages or included in home mortgage payments)
a. Homeowner's or renter's \$
b. Life \$
c. Health \$
d. Auto \$
e. Other \$
12. Taxes (not deducted from wages or included in home mortgage payments) (Specify) \$
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)
a. Auto \$
b. Other \$
c. Other \$
14. Alimony, maintenance, and support paid to others \$
15. Payments for support of additional dependents not living at your home \$
16. Regular expenses from operation of business, profession, or farm (attach detailed statement) \$
17. Other \$
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.) \$
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:
20. STATEMENT OF MONTHLY NET INCOME
a. Average monthly income from Line 15 of Schedule I \$
b. Average monthly expenses from Line 18 above \$
c. Monthly net income (a. minus b.) \$

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

## DECLARATION CONCERNING DEBTOR'S SCHEDULES

### DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
Debtor

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

### DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any,  
of Bankruptcy Petition Preparer

Social Security No.  
(Required by 11 U.S.C. § 110.)

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.*

Address

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_ Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.*

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

### DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the \_\_\_\_\_ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the \_\_\_\_\_ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets (Total shown on summary page plus 1), and that they are true and correct to the best of my knowledge, information, and belief.

Date \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
[Print or type name of individual signing on behalf of debtor.]

*[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]*

*Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.*

## 2005-2007 COMMITTEE NOTE

The forms of the Schedules of Assets and Liabilities are amended to implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005) (“BAPCPA”). An amendment that directs the debtor to avoid disclosing the name and address of any minor child occurs in Schedules B, D, E, F, G, and H in conformity with § 112 which was added to the Code in 2005. Section 112 provides for the debtor to furnish the name of any minor child confidentially to the court, should the trustee need the information to evaluate properly the information filed by the debtor. In addition, those schedules are amended to add to the reference to Rule 1007(m), with respect to a minor child, a direction to include for noticing purposes the name, address, and legal relationship to the child of “a person described” in that rule. Rule 1007(m) requires the person named to be someone on whom process would be served in an adversary proceeding against the child.

The “Statistical Summary of Certain Liabilities and Related Data” is added to collect from individual debtors with primarily consumer debts the information needed to prepare statistical reports required under 28 U.S.C. § 159, which was enacted as part of BAPCPA. Collecting the bulk of the information to be used in these statistical reports in the Summary of Schedules and the statistical summary will assist the courts and the Director of the Administrative Office to fulfill their statutory responsibilities. Schedules D and E are amended to provide additional totals and, together with Schedule F, to direct debtors who must complete the statistical summary to report total amounts there. Similarly, Schedules I and J are amended to conform their terminology to that used in 28 U.S.C. § 159 and direct debtors who must complete the statistical summary to report the specified amounts there.

Schedules A, B, C, and D are amended to delete the word “market” from the columns in which the debtor reports the value of various kinds of property. Amendments to § 506 of the Code enacted in 2005 specify that “replacement value” must be used in connection with certain property. The schedules no longer specify “market” value and permit the debtor to choose the appropriate one, whether that be replacement, market, or some other value. Valuation of property, generally, is the subject of extensive provisions in the Code, and the deletion of the word “market” from the determinations of value to be made by the debtor on

the schedules is intended to remove any inference about choice of valuation standard. This deletion simply indicates that the form takes no position on which Code provision or valuation standard may be applicable in any particular instance.

The following paragraphs describe changes that are specific to each schedule:

Schedule B - Personal Property is amended to require the debtor to list any interests in an education IRA, because § 541(b)(5), added to the Code in 2005, makes special provision for them. The schedule is also amended to require the debtor to disclose the existence of any customer lists or other compilations containing personally identifiable information provided by an individual to the debtor in connection with obtaining a product or service from the debtor for personal, family, or household purposes. This amendment implements § 332, which was added to the Code by BAPCPA in 2005.

Schedule C - Property Claimed as Exempt is amended to delete descriptive information concerning the length of domicile required for the debtor to qualify to claim certain exemptions. Any summary of the BAPCPA amendments to § 522 of the Code concerning these requirements might inadvertently cause the debtor to lose important rights. Accordingly, the form now directs the debtor to indicate whether exemptions are being claimed under § 522(b)(2) or § 522(b)(3) and whether the debtor claims a homestead exemption that exceeds \$136,875.

Schedule D - Creditors Holding Secured Claims is amended to provide for creating a total of any unsecured amounts (amounts that exceed the value of the collateral) owed to creditors holding secured claims. In addition to facilitating statistical reporting, providing a breakdown of the amounts owed to creditors listed on this schedule will assist the individual debtor in completing the means test calculation under § 707(b)(2)(A)(i) of the Code.

Schedule E - Creditors Holding Unsecured Priority Claims is amended to implement the changes in priority to which a claim may be entitled under 11 U.S.C. § 507 as amended by BAPCPA and to add the new priority included in the 2005 Act for claims for death or personal injury while the debtor was intoxicated. "Subtotal" and "Total" boxes have been added to the columns labeled "Amount Entitled to Priority" and "Amount Not Entitled to Priority" for statistical reporting purposes and to assist the individual debtor in completing the means test calculation under § 707(b)(2)(A)(i) of the Code.

Schedule H - Codebtors is amended to add specifics about community property jurisdictions in connection with the requirement to provide the name of any spouse of a debtor who resides or resided in a community property jurisdiction. This amendment also mirrors amendments made in 1997 to Official Form 7, the Statement of Financial Affairs, and will assure that these codebtors

receive notice of the filing of the bankruptcy case. The form also is amended to extend from six years to eight years the time period for which this information is reported pursuant to the 2005 amendments to § 727(a)(8) of the Code.

Schedule I - Current Income of Individual Debtor(s) is amended to make it clear that “every” married debtor must provide income information for both spouses, unless the spouses are separated and a joint petition is not filed. The description of the income to be reported is revised to clarify that the purpose of this schedule is to obtain information about actual income on the date the bankruptcy case is filed and which a debtor reasonably expects in the future in contrast to the debtor’s “current monthly income” as defined in § 101(10A) and reported on Form 22A, 22B, or 22C. And a statement included at the top of the form also explains that the income calculated this form may be different than the current monthly income. Line numbers have been added to assist the debtor in calculating and reporting totals. A new subtotal line for income from sources other than as an employee and a new “average monthly income” line will enable this form to be used in conjunction with Schedule J to satisfy the requirements of § 521(a)(1)(B)(v), which was added to the Code by BAPCPA. New statistical reporting requirements in 28 U.S.C. § 159 also require “average monthly income.” In addition, the form is revised to provide the statement concerning any anticipated increase or decrease in income required in § 521(a)(1)(B)(vi), also added to the Code in 2005.

Schedule J - Current Expenditures of Individual Debtor(s). In conjunction with amendments to Schedule I, the form is amended to provide for reporting the debtor’s actual “average monthly expenses,” as required by 28 U.S.C. § 159 and a statement of monthly net income, itemized to show how the amount is calculated, as required by § 522(a)(1)(B)(v), which was added to the Code by BAPCPA in 2005. In addition, line numbers have been inserted and the description of expenses revised to make it clear than the purpose of this schedule is to obtain information about a debtor’s actual and reasonably foreseeable expenses on the date the bankruptcy case is filed. And a statement similar to the statement at the top of Schedule I explains that the expenses calculated on the form may differ from the expenses calculated on Forms 22A or 22C. A direction has been added to require the debtor to report any increase or decrease in expenses anticipated to occur within the year following the filing of the document, as required by § 521(a)(1)(B)(vi), which also was added to the Code in 2005.

Declaration Concerning Debtor’s Schedules. The declaration by individual or joint debtors is amended to require the debtor to merely state the total number of pages being verified. The declaration and signature of any non-attorney bankruptcy petition preparer is amended to include material mandated by § 110 of the Code as amended in 2005.



**UNITED STATES BANKRUPTCY COURT**

\_\_\_\_\_  
**DISTRICT OF** \_\_\_\_\_

In re: \_\_\_\_\_,  
 Debtor

Case No. \_\_\_\_\_  
 (if known)

**STATEMENT OF FINANCIAL AFFAIRS**

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

*DEFINITIONS*

*"In business."* A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

*"Insider."* The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

**1. Income from employment or operation of business**

None  State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

**2. Income other than from employment or operation of business**

None

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

**3. Payments to creditors**

None

*Complete a. or b., as appropriate, and c.*

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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None

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475. If the debtor is an individual, indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING
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None

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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**4. Suits and administrative proceedings, executions, garnishments and attachments**

None

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
------------------------------------	----------------------	---------------------------------	--------------------------

None

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
------------------------------------------------------------------------	--------------------	-----------------------------------------

**5. Repossessions, foreclosures and returns**

None

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
-------------------------------------------	------------------------------------------------------------------	-----------------------------------------

**6. Assignments and receiverships**None  

a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
---------------------------------	-----------------------	-----------------------------------------

None  

b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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**7. Gifts**None  

List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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**8. Losses**None  

List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
-----------------------------------------	----------------------------------------------------------------------------------------------------------------	-----------------

**9. Payments related to debt counseling or bankruptcy**None  

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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**10. Other transfers**None  

a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
--------------------------------------------------------	------	--------------------------------------------------

None  

b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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**11. Closed financial accounts**None  

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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**12. Safe deposit boxes**None  

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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-

**13. Setoffs**None  

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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**14. Property held for another person**None  

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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**15. Prior address of debtor**None  

If debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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**16. Spouses and Former Spouses**

None

If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

**17. Environmental Information.**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

None

a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None

b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
--------------------------	------------------------------------------	-------------------	----------------------

None

c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
------------------------------------------	---------------	--------------------------

**18. Nature, location and name of business**

None

a. *If the debtor is an individual*, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in

which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

*If the debtor is a partnership*, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

*If the debtor is a corporation*, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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- None  b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

#### 19. Books, records and financial statements

- None  a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
------------------	-------------------------

- None  b. List all firms or individuals who within **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
------	---------	-------------------------



- None  c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
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- None  d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS	DATE ISSUED
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## 20. Inventories

- None  a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
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- None  b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS
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## 21. Current Partners, Officers, Directors and Shareholders

- None  a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
------------------	--------------------	------------------------

- None  b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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**22. Former partners, officers, directors and shareholders**

None  a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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None  b. If the debtor is a corporation, list all officers or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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**23. Withdrawals from a partnership or distributions by a corporation**

None  If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
-----------------------------------------------------------	-----------------------------------	------------------------------------------------------------

**24. Tax Consolidation Group.**

None  If the debtor is a corporation, list the name and federal taxpayer-identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER-IDENTIFICATION NUMBER (EIN)
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**25. Pension Funds.**

None  If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER-IDENTIFICATION NUMBER (EIN)
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\* \* \* \* \*

*[If completed by an individual or individual and spouse]*

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date \_\_\_\_\_  
\_\_\_\_\_

Signature

of Debtor

Date \_\_\_\_\_

Signature \_\_\_\_\_  
of Joint Debtor  
(if any)

*[If completed on behalf of a partnership or corporation]*

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date \_\_\_\_\_  
\_\_\_\_\_

Signature

Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

\_\_\_\_\_ continuation sheets attached

*Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571*

**DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

Social-Security No. (Required by 11 U.S.C. § 110.)

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs this document.*

\_\_\_\_\_  
Address

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. § 156.*

2005-2007 COMMITTEE NOTE

The form is amended in several ways to reflect changes in the Bankruptcy Code made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23 (April 20, 2005). A new sentence in the introduction advises the debtor not to disclose the name and address of any minor child in conformity with § 112, which was added to the Code by the 2005 Act. In addition, the form is amended to add to the reference to Rule 1007(m) with respect to a minor child a direction to include for noticing purposes the name, address, and legal relationship to the child of “a person described” in that rule. Rule 1007(m) requires the person named to be someone on whom process would be served in an adversary proceeding against the child.

The definition of “in business” is amended in the introductory section and in Question 1 and Question 18 to clarify that various part-time activities can result in the debtor being “in business” for purposes of the form.

Question 1 is amended to specify that, in addition to the income from the debtor’s primary employment, the debtor must include income from part-time activities either as an employee or from self-employment. The debtor now also will report the source of all income from employment or operation of a business, even if there is only one source, in order to assist the trustee in reviewing the pay stubs, etc., filed by the debtor in the case.

Question 3 is amended to accommodate amendments to § 547(c) of the Code enacted in 2005 which exempt from recovery by the trustee payments by a debtor for a domestic support obligation or as part of an alternative repayment schedule negotiated by an approved nonprofit budgeting and credit counseling agency. In addition, Question 3 now requires a debtor with primarily non-consumer debts to report only those transfers that aggregate more than \$5,475 to any creditor in the 90-day period prior to the filing of the petition, as a result of the addition of § 547(c)(9) to the Code in 2005. In addition, the language of the question is revised for clarity.

In Question 10, the extension of the reach-back period for transfers from one year to two years reflects the 2005 amendment to § 548(a)(1) of the Code to permit a trustee to avoid a fraudulent transfer made by the debtor within two years before the date of the filing of the petition. Question 10 also is amended to implement new § 548(e) added to the Code in 2005 to require the debtor to disclose all transfers to any self-settled asset protection trust within the ten years before the filing of the petition.

Question 15 is amended to extend from two years to three years the prepetition time period for which the debtor must disclose the addresses of all premises occupied by the debtor. This information will assist the trustee, the United States trustee, and the court to ascertain whether any homestead exemption asserted by the debtor is properly claimed under § 522(b)(3)(A) as amended, and §§ 522(p) and (q) as added to the Code in 2005.

The form also is amended to extend from six years to eight years the period before the filing of the petition concerning which the debtor is required to disclose the name of the debtor's spouse or of any former spouse who resides or resided with the debtor in a community property state. In addition, the certification by a non-attorney bankruptcy petition preparer is renamed a "declaration" and is amended to include material mandated by 11 U.S.C. § 110 as amended by the 2005 Act.



**EXPLANATIONS**

**B9A (Official Form 9A) (12/07)**

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
<b>Legal Advice</b>	The staff of the bankruptcy clerk’s office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor’s property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor’s wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727 (a) <i>or</i> that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk’s office by the “Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts” listed on the front side. The bankruptcy clerk’s office must receive the complaint and any required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk’s office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk’s office must receive the objections by the “Deadline to Object to Exemptions” listed on the front side.
Bankruptcy Clerk’s Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk’s office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor’s property and debts and the list of the property claimed as exempt, at the bankruptcy clerk’s office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices





**EXPLANATIONS**

**B9B (Official Form 9B) (12/07)**

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
<b>Legal Advice</b>	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT _____ District of _____	
<b>Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, &amp; Deadlines</b>	
[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 7 on _____ (date).]	
You may be a creditor of the debtor. <b>This notice lists important deadlines.</b> You may want to consult an attorney to protect your Rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.	
See Reverse Side for Important Explanations	
Debtor(s) (name(s) and address):	Case Number:
	Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)/Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address):	
Telephone number:	Telephone number:
<b>Meeting of Creditors</b>	
Date:        /        /        Time:    (    ) A. M.    Location:	(    ) P. M.
<b>Presumption of Abuse under 11 U.S.C. § 707(b)</b> See "Presumption of Abuse" on the reverse side.	
Depending on the documents filed with the petition, one of the following statements will appear.	
The presumption of abuse does not arise. Or	
The presumption of abuse arises. Or	
Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.	
<b>Deadlines:</b> Papers must be <i>received</i> by the bankruptcy clerk's office by the following deadlines:	
<b>Deadline to File a Proof of Claim:</b>	
For all creditors (except a governmental unit):	For a governmental unit:
<b>Creditor with a Foreign Address:</b> A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.	
<b>Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:</b>	
<b>Deadline to Object to Exemptions:</b> Thirty (30) days after the <i>conclusion</i> of the meeting of creditors.	
<b>Creditors May Not Take Certain Actions:</b>	
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.	
Address of the Bankruptcy Clerk's Office:	<b>For the Court:</b>
	Clerk of the Bankruptcy Court:
Telephone number:	
Hours Open:	Date:

**EXPLANATIONS**

**B9C (Official Form 9C) (12/07)**

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
<b>Legal Advice</b>	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727 (a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	



**EXPLANATIONS**

**B9D (Official Form 9D) (12/07)**

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
<b>Legal Advice</b>	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT _____ District of _____	
<b>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, &amp; Deadlines</b>	
[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____ (date).]	
You may be a creditor of the debtor. <b>This notice lists important deadlines.</b> You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.	
See Reverse Side for Important Explanations	
Debtor(s) (name(s) and address):	Case Number:
	Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)/Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Attorney for Debtor(s) (name and address):
	Telephone number:
<b>Meeting of Creditors</b>	
Date:     /     /     Time:     (     ) A. M.     Location:	(     ) P. M.
<b>Deadlines:</b> Papers must be <i>received</i> by the bankruptcy clerk's office by the following deadlines:	
<b>Deadline to File a Proof of Claim:</b> Notice of deadline will be sent at a later time.	
<b>Creditor with a Foreign Address:</b> A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.	
<b>Deadline to File a Complaint to Determine Dischargeability of Certain Debts:</b>	
<b>Deadline to File a Complaint Objecting to Discharge of the Debtor:</b>  <i>First date set for hearing on confirmation of plan</i> Notice of that date will be sent at a later time.	
<b>Deadline to Object to Exemptions:</b>  Thirty (30) days after the <i>conclusion</i> of the meeting of creditors.	
<b>Creditors May Not Take Certain Actions:</b> In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.	
Address of the Bankruptcy Clerk's Office:	<b>For the Court:</b>
	Clerk of the Bankruptcy Court:
Telephone number:	
Hours Open:	Date:

**EXPLANATIONS**

**B9E (Official Form 9E) (12/07)**

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141 (d) (3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	





**EXPLANATIONS**

**B9E ALT (Official Form 9E ALT) (12/07)**

<p>Filing of Chapter 11 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.</p>
<p>Legal Advice</p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141 (d) (3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Creditor with a Foreign Address</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p align="center">Refer To Other Side For Important Deadlines and Notices</p>	
<p> </p>	



## EXPLANATIONS

B9F (Official Form 9F) (12/07)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	



## EXPLANATIONS

B9F ALT (Official Form 9F ALT) (12/07)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File Proof of Claim" listed on the front side, or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	



**EXPLANATIONS**

**B9G (Official Form 9G) (12/07)**

<p>Filing of Chapter 12 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers and family fishermen to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.</p>
<p><b>Legal Advice</b></p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Creditor with a Foreign Address</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>

Refer To Other Side For Important Deadlines and Notices





**EXPLANATIONS**

**B9H (Official Form 9H) (12/07)**

<p>Filing of Chapter 12 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers and family fishermen to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.</p>
<p><b>Legal Advice</b></p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Creditor with a Foreign Address</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p align="center">Refer To Other Side For Important Deadlines and Notices</p>	
<p> </p>	



**EXPLANATIONS**

**B9I (Official Form 9I) (12/07)**

<p>Filing of Chapter 13 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.</p>
<p><b>Legal Advice</b></p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to exceed or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2) or (4), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Creditor with a Foreign Address</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p align="center">Refer To Other Side For Important Deadlines and Notices</p>	
<p> </p>	

2005-2007 COMMITTEE NOTE

The form is amended in a variety of ways to implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). All versions of the form are amended to advise creditors to consult an attorney concerning what rights they may have in the specific case. All versions of the form also are amended to provide to creditors with foreign addresses information about filing claims and to advise those creditors to consult a lawyer familiar with United States bankruptcy law regarding any questions they may have about their rights in a particular case. These amendments implement § 1514, which was added to the Code in 2005.

Forms 9A and 9C are amended to include a box in which the clerk can notify creditors in a chapter 7 case filed by an individual with primarily consumer debts if the presumption of abuse has arisen under § 707(b) of the Code as amended in 2005. Under § 342(d) of the Code, the clerk has a duty to notify creditors concerning the presumption within ten days of the filing of the petition. In cases in which the debtor does not file Official Form 22A with the petition, the forms provide for the clerk to state that insufficient information has been filed, and to inform creditors that if later-filed information indicates that the presumption arises, creditors will be sent another notice. Forms 9G and 9H are amended to add “family fishermen” to the notices used in chapter 12 cases, in conformity with the 2005 amendments to the Code extending the provisions of chapter 12 to family fishermen.

In cases involving serial filers (debtors who have filed more than one case within a specified period), the automatic stay provided by § 362(a) of the Code as amended in 2005 may not apply or may be limited in duration, unless the stay is extended or imposed by court order. The form contains a general statement alerting debtors to this possibility.

Section 1514, added to the Code in 2005, also requires that a secured creditor with a foreign address be advised whether the creditor is required to file a proof of claim, and Forms 9B, 9D, 9E, 9E (Alt.), 9F, 9F (Alt.), 9G, 9H, and 9I are amended to include general information addressing that question. Forms 9E, 9E (Alt.), 9F, and 9F (Alt.) also are amended to inform creditors that in a case in which the debtor has filed a plan for which it has solicited acceptances before filing the case, the court may, after notice and a hearing, order that the United States trustee not convene a meeting of creditors.

Forms 9E and 9E (Alt.) are amended to state that, unless the court orders otherwise, an individual chapter 11 debtor's discharge is not effective until completion of all payments under the plan, as provided in § 1141(d)(5) which was added to the Code in 2005. Forms 9F and 9F (Alt.) are amended to include a deadline to file a complaint to determine the dischargeability of a debt, in conformity with § 1141(d)(6), which also was added to the Code in 2005.

Form 9I is amended to include a deadline to file a complaint to determine the dischargeability of certain debts. This amendment implements a 2005 amendment to § 1328(a) of the Code.

In addition, all versions of the form are amended to provide to the public only the last four digits of any individual debtor's taxpayer-identification number. This amendment implements Rule 9037.

**B10 (Official Form 10) (12/07)**

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		<b>PROOF OF CLAIM</b>
Name of Debtor: _____		Case Number: _____
<i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): _____		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: _____  Telephone number: _____		Court Claim Number: _____ (if known)  Filed on: _____
Name and address where payment should be sent (if different from above): _____  Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
<b>1. Amount of Claim as of Date Case Filed:</b> \$ _____  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).  <b>Amount entitled to priority:</b> \$ _____  <i>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>
<b>2. Basis for Claim:</b> _____ (See instruction #2 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____  <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:  <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> ____ %  <b>Amount of arrearage and other charges as of time case filed included in secured claim,</b> <b>if any:</b> \$ _____ <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____ <b>Amount Unsecured:</b> \$ _____		
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain: _____		
<b>Date:</b> _____	<b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.	<b>FOR COURT USE ONLY</b>

*Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.*

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**4. Secured Claim:**

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien

documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.

**Date and Signature:**

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

**DEFINITIONS**

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is the person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing.

**Claim**

A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. §506(a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. §507(a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**INFORMATION**

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the fact value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

2005-2007 COMMITTEE NOTE

The form is amended to conform to changes in the priority afforded the claims of certain creditors in § 507(a) of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005).

In addition, the form and its instructions are amended in several respects based on the experiences of creditors and trustees in using it and on the technological changes that have occurred in the courts' processing of claims. A definition of the word "redacted" has been added in conformity with Rule 9037.

The creditor now has a space in which to provide a separate payment address if different from the creditor's address for receiving notices in the case. The checkboxes for indicating that the creditor's address provided on the proof of claim is a new address, and that the creditor never received any notices from the court in the case have been deleted. The computer systems now used by the courts make it unnecessary for a creditor to "flag" a new address or call attention to the fact that the creditor is making its first appearance in the case. In place of the deleted items is a new checkbox to be used when a debtor or a trustee files a proof of claim for a creditor; it will alert the clerk to send the notice required by Rule 3004. The box for indicating whether the claim replaces a previously filed claim also has been deleted as no longer necessary in light of the 2005 amendments to Rules 3004 and 3005. The creditor simply will amend the claim filed by the other party.

Requests for the creditor to state the date on which the debt was incurred and the date on which any court judgment concerning the debt was obtained have been deleted, based on reports from trustees that they rely on the documents supporting the claim for this information. The checkboxes for stating the basis for the creditor's claim have been replaced with a blank in which the creditor is to provide this information. Examples of the most common categories, based on the former checkboxes, can be found in the instructions on the form. The request to state the account number by which the creditor identifies the debtor has been moved to paragraph 3 of the form and has been revised to request only the last four digits of the number, in conformity with Rule 9037. In addition, a new paragraph 3a gives the creditor a place to notify the trustee and the court of any change in the creditor's name, or that the claim has been transferred, or to provide any other information to clarify a difference between the proof of claim and the creditor's claim as scheduled by the debtor.



The adjective “total” is deleted from the sections of the form where the creditor states the amount of the claim and the creditor now simply reports the amount of the claim. If the claim is a general unsecured claim, no further details are stated on the form, although a creditor still must attach a copy of any writing on which the claim is based, as required by Rule 3001(c), and must attach a statement itemizing any interest or other charges (in addition to the principal) that are included in the claim. If the claim or any part of it is secured or entitled to priority under § 507(a) of the Code, the creditor is directed to provide details in the appropriate sections of the form. The creditor now states the amount to be afforded priority only once, in the section of the form designated for describing the specific priority being asserted. The introductory language in the section where the creditor describes any priority to which it is entitled has been revised for clarity. The word “collateral” has been replaced with the less colloquial and more accurate phrase “lien on property” throughout the form.

Information about obtaining acknowledgment from the court of the filing of the proof of claim is revised and moved to a new section on the reverse side called “Information.” This new section also alerts a creditor to the possibility that it may be approached about selling its claim, advises that the court has no role in any such solicitations, and states that a creditor is under no obligation to accept any offer to purchase its claim. A new instruction is added about signing a proof of claim. This instruction includes citations to Rules 9011 and 5005(a)(2) concerning signature requirements in an electronic filing environment.

Finally, all of the definitions and instructions on the reverse side of the form are amended generally to reflect the deletions, additions, and other changes made on page 1. These include a reminder to the creditor to keep the court informed of any changes in its address. The instructions now appear at the top of the page, and the text is revised both to reflect the substantive changes to the form and to improve the clarity and style of this explanatory material.

Form 16A. CAPTION (FULL)

United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_, )

*[Set forth here all names including married, )  
maiden, and trade names used by debtor within )  
last 8 years.] )*

Debtor )

Case No. \_\_\_\_\_

Address \_\_\_\_\_ )

\_\_\_\_\_ )

Chapter \_\_\_\_\_

Last four digits of Social-Security or Individual Tax- )  
Payer-Identification (ITIN) No(s)., (if any): \_\_\_\_\_ )

\_\_\_\_\_ )  
Employer Tax-Identification (EIN) No(s). (if any): \_\_\_\_\_ )

\_\_\_\_\_ )

*[Designation of Character of Paper]*

2005-2007 COMMITTEE NOTE

The form is amended to require that the title of the case include all names used by the debtor within the last eight years in conformity with § 727(a)(8) as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), extending from six years to eight years the period during which a debtor is barred from receiving successive discharges. In conformity with Rule 9037, the filer is directed to provide only the last four digits of any individual debtor's taxpayer-identification number.

# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_, )  
*[Set forth here all names including married,* )  
*maiden, and trade names used by debtor within* )  
*last 8 years.]* )  
Debtor ) Case No. \_\_\_\_\_  
) )  
Address \_\_\_\_\_ )  
\_\_\_\_\_ ) Chapter 7  
) )  
Last four digits of Social-Security or other Individual Taxpayer- )  
Identification No(s)(if any): \_\_\_\_\_ )  
) )  
Employer Tax-Identification No(s).(EIN) [if any]: \_\_\_\_\_ )  
\_\_\_\_\_ )

## DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: \_\_\_\_\_

BY THE COURT

\_\_\_\_\_  
United States Bankruptcy Judge

**SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.**

**EXPLANATION OF BANKRUPTCY DISCHARGE  
IN A CHAPTER 7 CASE**

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

**Collection of Discharged Debts Prohibited**

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. [*In a case involving community property*: There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

**Debts that are Discharged**

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

**Debts that are Not Discharged.**

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

2005-2007 COMMITTEE NOTE

The form is amended to require that the title of the case include all names used by the debtor within the eight years prior to the filing of the petition in the case in conformity with § 727(a)(8) as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), extending from six years to eight years the period during which a debtor is barred from receiving successive discharges. The explanation part of the form is amended to include additional types of debts that are not discharged under § 523(a), as amended in 2005, and to revise certain terminology in conformity with provisions of the 2005 Act. In conformity with Rule 9037 and Official Form 16A, the caption also is amended to provide only the last four digits of any individual debtor's taxpayer-identification number.

# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared the accompanying document(s) listed below for compensation and have provided the debtor with a copy of the document(s) and the attached notice as required by 11 U.S.C. §§ 110(b), 110(h), and 342(b); and (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Accompanying documents:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Printed or Typed Name and Title, if any, of  
Bankruptcy Petition Preparer:  
\_\_\_\_\_

Social-Security No. of Bankruptcy Petition  
Preparer (Required by 11 U.S.C. § 110):  
\_\_\_\_\_

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs this document.*

\_\_\_\_\_  
Address

X  
Signature of Bankruptcy Petition Preparer      Date \_\_\_\_\_

Names and social-security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.*

**A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.**

**NOTICE TO DEBTOR BY NON-ATTORNEY BANKRUPTCY PETITION PREPARER**

*[Must be filed with any document(s) prepared by a bankruptcy petition preparer.]*

I am a bankruptcy petition preparer. I am not an attorney and may not practice law or give legal advice. Before preparing any document for filing as defined in § 110(a)(2) of the Bankruptcy Code or accepting any fees, I am required by law to provide you with this notice concerning bankruptcy petition preparers. Under the law, § 110 of the Bankruptcy Code (11 U.S.C. § 110), I am forbidden to offer you any legal advice, including advice about any of the following:

- whether to file a petition under the Bankruptcy Code (11 U.S.C. § 101 et seq.);
- whether commencing a case under chapter 7, 11, 12, or 13 is appropriate;
- whether your debts will be eliminated or discharged in a case under the Bankruptcy Code;
- whether you will be able to retain your home, car, or other property after commencing a case under the Bankruptcy Code;
- the tax consequences of a case brought under the Bankruptcy Code;
- the dischargeability of tax claims;
- whether you may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;
- how to characterize the nature of your interests in property or your debts; or
- bankruptcy procedures and rights.

*[The notice may provide additional examples of legal advice that a bankruptcy petition preparer is not authorized to give.]*

In addition, under 11 U.S.C. § 110(h), the Supreme Court or the Judicial Conference of the United States may promulgate rules or guidelines setting a maximum allowable fee chargeable by a bankruptcy petition preparer. As required by law, I have notified you of this maximum allowable fee, if any, before preparing any document for filing or accepting any fee from you.

\_\_\_\_\_  
Signature of Debtor                      Date

\_\_\_\_\_  
Joint Debtor (if any)                      Date

*[In a joint case, both spouses must sign.]*



2005-2007 COMMITTEE NOTE

This form is new. It is derived from form 19B and replaces forms 19A and 19B (which forms are abrogated). The form contains the notice a bankruptcy petition preparer is required to give to a debtor under § 110 of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), and the bankruptcy petition preparer's signed declaration (also required by § 110 of the Code) that the notice was given to the debtor.

The notice states, in language mandated in the 2005 Act, that the bankruptcy petition preparer is not an attorney and must not give legal advice. The notice also includes examples of advice a bankruptcy petition preparer may not give that are taken from § 110(e)(2) of the Code.

Although space is provided in the declaration to list multiple documents prepared for a single filing, a new form 19 must be completed and accompany subsequent filings. For example, one form 19 listing all forms prepared by the bankruptcy petition preparer would be filed with the debtor's petition package. Another form 19 would be required if the debtor files amended schedules later in the case that were prepared by the bankruptcy petition preparer.

The form must be signed by the debtor and the bankruptcy petition preparer where indicated, and must be filed with each document for filing prepared by the bankruptcy petition preparer.

**STATEMENT OF SOCIAL-SECURITY NUMBER OR  
INDIVIDUAL TAXPAYER-IDENTIFICATION NUMBER (ITIN)**

[Caption as in Form 16A.]

**STATEMENT OF SOCIAL-SECURITY NUMBER(S)  
(or other Individual Taxpayer-Identification Number(s) (ITIN(s)))**

1. Name of Debtor (Last, First, Middle): \_\_\_\_\_  
(Check the appropriate box and, if applicable, provide the required information.)

- Debtor has a Social-Security Number and it is: \_\_\_\_\_  
(If more than one, state all.)
- Debtor does not have a Social-Security Number but has an Individual Taxpayer-Identification Number (ITIN), and it is: \_\_\_\_\_  
(If more than one, state all.)
- Debtor does not have either a Social-Security Number or an Individual Taxpayer-Identification Number (ITIN).

2. Name of Joint Debtor (Last, First, Middle): \_\_\_\_\_  
(Check the appropriate box and, if applicable, provide the required information.)

- Joint Debtor has a Social-Security Number and it is: \_\_\_\_\_  
(If more than one, state all.)
- Joint Debtor does not have a Social-Security Number but has an Individual Taxpayer-Identification Number (ITIN) and it is: \_\_\_\_\_  
(If more than one, state all.)
- Joint Debtor does not have either a Social-Security Number or an Individual Taxpayer-Identification Number (ITIN).

I declare under penalty of perjury that the foregoing is true and correct.

X \_\_\_\_\_  
Signature of Debtor Date

X \_\_\_\_\_  
Signature of Joint Debtor Date

\*Joint debtors must provide information for both spouses.  
Penalty for making a false statement: Fine of up to \$250,000 or up to 5 years imprisonment or both. 18 U.S.C. §§ 152 and 3571.

2007 COMMITTEE NOTE

The form is amended to direct an individual debtor who does not have a social-security number but has another government-issued individual taxpayer-identification number to furnish that number to the court. In light of the new Rule 9037 which limits public disclosure to all but the last four digits of any individual taxpayer-identification number, the amendment to this form will ensure that the court and creditors can properly identify a debtor who does not have a social-security number.

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

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

According to the calculations required by this statement:

- The presumption arises.  
 The presumption does not arise.

(Check the box as directed in Parts I, III, and VI of this statement)

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

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

<b>Part I. EXCLUSION FOR DISABLED VETERANS AND NON-CONSUMER DEBTORS</b>															
1A	<p>If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> <b>Veteran's Declaration.</b> By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)).</p>														
1B	<p>If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> <b>Declaration of non-consumer debts.</b> By checking this box, I declare that my debts are not primarily consumer debts.</p>														
<b>Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION</b>															
2	<p><b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 3-11.</b></p> <p>b. <input type="checkbox"/> Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." <b>Complete only Column A ("Debtor's Income") for Lines 3-11.</b></p> <p>c. <input type="checkbox"/> Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. <b>Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.</b></p> <p>d. <input type="checkbox"/> Married, filing jointly. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.</b></p>														
	<p>All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.</p>		<b>Column A Debtor's Income</b>	<b>Column B Spouse's Income</b>											
3	<b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>		\$	\$											
4	<p><b>Income from the operation of a business, profession or farm.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. <b>Do not include any part of the business expenses entered on Line b as a deduction in Part V.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 10%; text-align: center;">\$</td> <td style="width: 30%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td style="text-align: center;">\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td style="text-align: center;">Subtract Line b from Line a</td> <td></td> </tr> </table>			a.	Gross receipts	\$		b.	Ordinary and necessary business expenses	\$		c.	Business income	Subtract Line b from Line a	
a.	Gross receipts	\$													
b.	Ordinary and necessary business expenses	\$													
c.	Business income	Subtract Line b from Line a													
			\$	\$											

5	<p><b>Rent and other real property income.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. <b>Do not include any part of the operating expenses entered on Line b as a deduction in Part V.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:40%;">Gross receipts</td> <td style="width:15%;">\$</td> <td style="width:40%;"></td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> <td></td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Rent and other real property income</td> <td colspan="2">Subtract Line b from Line a</td> </tr> </table>	a.	Gross receipts	\$		b.	Ordinary and necessary operating expenses	\$		c.	Rent and other real property income	Subtract Line b from Line a		\$	\$
a.	Gross receipts	\$													
b.	Ordinary and necessary operating expenses	\$													
c.	Rent and other real property income	Subtract Line b from Line a													
6	<b>Interest, dividends and royalties.</b>	\$	\$												
7	<b>Pension and retirement income.</b>	\$	\$												
8	<b>Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose.</b> Do not include alimony or separate maintenance payments or amounts paid by your spouse if Column B is completed.	\$	\$												
9	<p><b>Unemployment compensation.</b> Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width:20%;">Debtor \$ _____</td> <td style="width:20%;">Spouse \$ _____</td> <td style="width:20%;"></td> </tr> </table>	Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____		\$	\$								
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____													
10	<p><b>Income from all other sources.</b> Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. <b>Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance.</b> Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:40%;"></td> <td style="width:15%;">\$</td> <td style="width:40%;"></td> </tr> <tr> <td style="text-align:center;">b.</td> <td></td> <td>\$</td> <td></td> </tr> </table> <p>Total and enter on Line 10</p>	a.		\$		b.		\$		\$	\$				
a.		\$													
b.		\$													
11	<b>Subtotal of Current Monthly Income for § 707(b)(7).</b> Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).	\$	\$												
12	<b>Total Current Monthly Income for § 707(b)(7).</b> If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.	\$	\$												

**Part III. APPLICATION OF § 707(b)(7) EXCLUSION**

13	<p><b>Annualized Current Monthly Income for § 707(b)(7).</b> Multiply the amount from Line 12 by the number 12 and enter the result.</p>	\$	
14	<p><b>Applicable median family income.</b> Enter the median family income for the applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p> <p>a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____</p>	\$	
15	<p><b>Application of Section 707(b)(7).</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> <b>The amount on Line 13 is less than or equal to the amount on Line 14.</b> Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII.</p> <p><input type="checkbox"/> <b>The amount on Line 13 is more than the amount on Line 14.</b> Complete the remaining parts of this statement.</p>		

**Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)**

**Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)**

16	Enter the amount from Line 12.	\$									
17	<p><b>Marital adjustment.</b> If you checked the box at Line 2.c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If you did not check box at Line 2.c, enter zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:70%;"></td> <td style="width:25%; text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td></td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td></td> <td style="text-align:right;">\$</td> </tr> </table> <p>Total and enter on Line 17.</p>	a.		\$	b.		\$	c.		\$	\$
a.		\$									
b.		\$									
c.		\$									
18	Current monthly income for § 707(b)(2). Subtract Line 17 from Line 16 and enter the result.	\$									

**Part V. CALCULATION OF DEDUCTIONS FROM INCOME**

**Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)**

19	<p><b>National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous.</b> Enter in Line 19 the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable household size and level of gross monthly income. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) In the space below, check the appropriate box to indicate how you determined your gross monthly income.</p> <p>Gross monthly income determined using: <input type="checkbox"/> Line 12 <input type="checkbox"/> Line 18 <input type="checkbox"/> Schedule I  <input type="checkbox"/> Other (specify): _____</p>	\$									
20A	<p><b>Local Standards: housing and utilities; non-mortgage expenses.</b> Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and household size. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court).</p>	\$									
20B	<p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and household size (this information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width:35%; text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42</td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net mortgage/rental expense</td> <td style="text-align:right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
21	<p><b>Local Standards: housing and utilities; adjustment.</b> if you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <p>_____</p> <p>_____</p> <p>_____</p>	\$									

22	<p><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8.</p> <p><input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter the amount from IRS Transportation Standards, Operating Costs &amp; Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>	\$									
23	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.)</p> <p><input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width:5%; text-align: center;">a.</td> <td style="width:70%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width:25%; text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td style="text-align: center;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
24	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> Complete this Line only if you checked the "2 or more" Box in Line 23.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width:5%; text-align: center;">a.</td> <td style="width:70%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width:25%; text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td style="text-align: center;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
25	<p><b>Other Necessary Expenses: taxes.</b> Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social-security taxes, and Medicare taxes. <b>Do not include real estate or sales taxes.</b></p>										
26	<p><b>Other Necessary Expenses: involuntary deductions for employment.</b> Enter the total average monthly payroll deductions that are required for your employment, such as retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as voluntary 401(k) contributions.</b></p>	\$									
27	<p><b>Other Necessary Expenses: life insurance.</b> Enter total average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b></p>	\$									
28	<p><b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. <b>Do not include payments on past due obligations included in Line 44.</b></p>	\$									
29	<p><b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.</p>	\$									
30	<p><b>Other Necessary Expenses: childcare.</b> Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. <b>Do not include other educational payments.</b></p>	\$									

31	<b>Other Necessary Expenses: health care.</b> Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents and that is not reimbursed by insurance or paid by a health savings account. <b>Do not include payments for health insurance or health savings accounts listed in Line 34.</b>	\$
32	<b>Other Necessary Expenses: telecommunication services.</b> Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. <b>Do not include any amount previously deducted.</b>	\$
33	<b>Total Expenses Allowed under IRS Standards.</b> Enter the total of Lines 19 through 32.	\$

**Subpart B: Additional Living Expense Deductions**

**Note: Do not include any expenses that you have listed in Lines 19-32**

34	<p><b>Health Insurance, Disability Insurance, and Health Savings Account Expenses.</b> List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents.</p> <table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">a.</td> <td>Health Insurance</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Disability Insurance</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Health Savings Account</td> <td style="text-align: right;">\$</td> </tr> </table> <p>Total and enter on Line 34</p> <p><b>If you do not actually expend this total amount,</b> state your actual total average monthly expenditures in the space below: \$ _____</p>	a.	Health Insurance	\$	b.	Disability Insurance	\$	c.	Health Savings Account	\$	\$
a.	Health Insurance	\$									
b.	Disability Insurance	\$									
c.	Health Savings Account	\$									
35	<b>Continued contributions to the care of household or family members.</b> Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	\$									
36	<b>Protection against family violence.</b> Enter the total average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	\$									
37	<b>Home energy costs.</b> Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. <b>You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.</b>	\$									
38	<b>Education expenses for dependent children less than 18.</b> Enter the total average monthly expenses that you actually incur, not to exceed \$137.50 per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. <b>You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.</b>	\$									
39	<b>Additional food and clothing expense.</b> Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) <b>You must demonstrate that the additional amount claimed is reasonable and necessary.</b>	\$									
40	<b>Continued charitable contributions.</b> Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	\$									
41	<b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 34 through 40	\$									



**Subpart C: Deductions for Debt Payment**

42	<p><b>Future payments on secured claims.</b> For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 42.</p>				
	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?	
	a.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no	
	b.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no	
	c.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no	
			Total: Add Lines a, b and c.		\$
43	<p><b>Other payments on secured claims.</b> If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.</p>				
	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount		
	a.		\$		
	b.		\$		
	c.		\$		
			Total: Add Lines a, b and c		\$
44	<p><b>Payments on prepetition priority claims.</b> Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. <b>Do not include current obligations, such as those set out in Line 28.</b></p>				\$
45	<p><b>Chapter 13 administrative expenses.</b> If you are eligible to file a case under chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.</p>				
	a.	Projected average monthly chapter 13 plan payment.		\$	
	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)		x	
	c.	Average monthly administrative expense of chapter 13 case		Total: Multiply Lines a and b	\$
46	<p><b>Total Deductions for Debt Payment.</b> Enter the total of Lines 42 through 45.</p>				\$
<b>Subpart D: Total Deductions from Income</b>					
47	<p><b>Total of all deductions allowed under § 707(b)(2).</b> Enter the total of Lines 33, 41, and 46.</p>				\$

<b>Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION</b>																	
48	Enter the amount from Line 18 (Current monthly income for § 707(b)(2))	\$															
49	Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))	\$															
50	Monthly disposable income under § 707(b)(2). Subtract Line 49 from Line 48 and enter the result	\$															
51	60-month disposable income under § 707(b)(2). Multiply the amount in Line 50 by the number 60 and enter the result.	\$															
52	<p><b>Initial presumption determination.</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 51 is less than \$6,575. Check the box for “The presumption does not arise” at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> The amount set forth on Line 51 is more than \$10,950. Check the box for “The presumption arises” at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> The amount on Line 51 is at least \$6,575, but not more than \$10,950. Complete the remainder of Part VI (Lines 53 through 55).</p>																
53	Enter the amount of your total non-priority unsecured debt	\$															
54	Threshold debt payment amount. Multiply the amount in Line 53 by the number 0.25 and enter the result.	\$															
55	<p><b>Secondary presumption determination.</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 51 is less than the amount on Line 54. Check the box for “The presumption does not arise” at the top of page 1 of this statement, and complete the verification in Part VIII.</p> <p><input type="checkbox"/> The amount on Line 51 is equal to or greater than the amount on Line 54. Check the box for “The presumption arises” at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.</p>																
<b>Part VII: ADDITIONAL EXPENSE CLAIMS</b>																	
56	<p><b>Other Expenses.</b> List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 70%;">Expense Description</th> <th style="width: 25%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td colspan="2" style="text-align: right;">Total: Add Lines a, b and c</td> <td style="text-align: center;">\$</td> </tr> </tbody> </table>			Expense Description	Monthly Amount	a.		\$	b.		\$	c.		\$	Total: Add Lines a, b and c		\$
	Expense Description	Monthly Amount															
a.		\$															
b.		\$															
c.		\$															
Total: Add Lines a, b and c		\$															
<b>Part VIII: VERIFICATION</b>																	
57	<p>I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this is a joint case, both debtors must sign.)</i></p> <p style="text-align: center;">Date: _____ Signature: _____ (Debtor)</p> <p style="text-align: center;">Date: _____ Signature: _____ (Joint Debtor, if any)</p>																

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

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

**CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME**

In addition to Schedules I and J, this statement must be completed by every individual chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

<b>Part I. CALCULATION OF CURRENT MONTHLY INCOME</b>														
<b>1</b>	<p><b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. <b>Complete only Column A (“Debtor’s Income”) for Lines 2-10.</b></p> <p>b. <input type="checkbox"/> Married, not filing jointly. <b>Complete only Column A (“Debtor’s Income”) for Lines 2-10.</b></p> <p>c. <input type="checkbox"/> Married, filing jointly. <b>Complete both Column A (“Debtor’s Income”) and Column B (“Spouse’s Income”) for Lines 2-10.</b></p>			<b>Column A Debtor’s Income</b>	<b>Column B Spouse’s Income</b>									
<p>All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.</p>														
<b>2</b>	<b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>			\$	\$									
<b>3</b>	<p><b>Net income from the operation of a business, profession, or farm.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 75%;">Gross receipts</td> <td style="width: 20%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td style="text-align: right;">Subtract Line b from Line a.</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a.	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary business expenses	\$												
c.	Business income	Subtract Line b from Line a.												
<b>4</b>	<p><b>Net rental and other real property income.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 75%;">Gross receipts</td> <td style="width: 20%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rent and other real property income</td> <td style="text-align: right;">Subtract Line b from Line a.</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rent and other real property income	Subtract Line b from Line a.	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary operating expenses	\$												
c.	Rent and other real property income	Subtract Line b from Line a.												
<b>5</b>	<b>Interest, dividends, and royalties.</b>			\$	\$									
<b>6</b>	<b>Pension and retirement income.</b>			\$	\$									
<b>7</b>	<p><b>Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor’s dependents, including child support paid for that purpose.</b> Do not include alimony or separate maintenance payments or amounts paid by the debtor’s spouse if Column B is completed.</p>			\$	\$									
<b>8</b>	<p><b>Unemployment compensation.</b> Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 20%;">Debtor \$ _____</td> <td style="width: 40%;">Spouse \$ _____</td> </tr> </table>			Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$						
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____												

9	<p><b>Income from all other sources.</b> Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. <b>Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance. Do not include</b> any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; text-align: center;">a.</td> <td style="width: 60%;"></td> <td style="width: 10%; text-align: center;">\$</td> <td style="width: 10%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> <td></td> </tr> </table>	a.		\$		b.		\$		\$	\$
a.		\$									
b.		\$									
10	<p><b>Subtotal of current monthly income.</b> Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).</p>	\$	\$								
11	<p><b>Total current monthly income.</b> If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.</p>	\$									

**Part II: VERIFICATION**

12	<p>I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this a joint case, both debtors must sign.)</i></p> <p style="text-align: center;">Date: _____ Signature: _____ (Debtor)</p> <p style="text-align: center;">Date: _____ Signature: _____ (Joint Debtor, if any)</p>		
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In re \_\_\_\_\_  
Debtor(s)

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

According to the calculations required by this statement:  
**The applicable commitment period is 3 years.**  
**The applicable commitment period is 5 years.**  
**Disposable income is determined under § 1325(b)(3).**  
**Disposable income is not determined under § 1325(b)(3).**  
 (Check the boxes as directed in Lines 17 and 23 of this statement.)

**CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME  
AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME**

In addition to Schedules I and J, this statement must be completed by every individual chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

<b>Part I. REPORT OF INCOME</b>					
<b>1</b>	<b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b> b. <input type="checkbox"/> Married. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</b>				
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.			<b>Column A Debtor's Income</b>	<b>Column B Spouse's Income</b>
<b>2</b>	<b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>			\$	\$
<b>3</b>	<b>Income from the operation of a business, profession, or farm.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. <b>Do not include any part of the business expenses entered on Line b as a deduction in Part IV.</b>				
	a.	Gross receipts	\$		
	b.	Ordinary and necessary business expenses	\$		
	c.	Business income	Subtract Line b from Line a	\$	\$
<b>4</b>	<b>Rent and other real property income.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. <b>Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.</b>				
	a.	Gross receipts	\$		
	b.	Ordinary and necessary operating expenses	\$		
	c.	Rent and other real property income	Subtract Line b from Line a	\$	\$
<b>5</b>	<b>Interest, dividends, and royalties.</b>			\$	\$
<b>6</b>	<b>Pension and retirement income.</b>			\$	\$
<b>7</b>	<b>Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose.</b> Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse.			\$	\$
<b>8</b>	<b>Unemployment compensation.</b> Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:				
	Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$

9	<p><b>Income from all other sources.</b> Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. <b>Do not include alimony or separate maintenance payments paid by your spouse, but include all other payments of alimony or separate maintenance. Do not include</b> any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; text-align: center;">a.</td> <td style="width: 70%;"></td> <td style="width: 20%; text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> </tr> </table>	a.		\$	b.		\$	\$	\$
a.		\$							
b.		\$							
10	<p><b>Subtotal.</b> Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).</p>	\$	\$						
11	<p><b>Total.</b> If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.</p>	\$							

**Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD**

12	<p><b>Enter the amount from Line 11.</b></p>	\$									
13	<p><b>Marital adjustment.</b> If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter on Line 13 the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents and specify, in the lines below, the basis for excluding this income (such as payment of the spouse’s tax liability or the spouse’s support of persons other than the debtor or the debtor’s dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; text-align: center;">a.</td> <td style="width: 70%;"></td> <td style="width: 20%; text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td style="text-align: center;">\$</td> </tr> </table> <p>Total and enter on Line 13.</p>	a.		\$	b.		\$	c.		\$	\$
a.		\$									
b.		\$									
c.		\$									
14	<p><b>Subtract Line 13 from Line 12 and enter the result.</b></p>	\$									
15	<p><b>Annualized current monthly income for § 1325(b)(4).</b> Multiply the amount from Line 14 by the number 12 and enter the result.</p>	\$									
16	<p><b>Applicable median family income.</b> Enter the median family income for applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p> <p>a. Enter debtor’s state of residence: _____ b. Enter debtor’s household size: _____</p>	\$									
17	<p><b>Application of § 1325(b)(4).</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> <b>The amount on Line 15 is less than the amount on Line 16.</b> Check the box for “The applicable commitment period is 3 years” at the top of page 1 of this statement and continue with this statement.</p> <p><input type="checkbox"/> <b>The amount on Line 15 is not less than the amount on Line 16.</b> Check the box for “The applicable commitment period is 5 years” at the top of page 1 of this statement and continue with this statement.</p>										

**Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME**

18	<p><b>Enter the amount from Line 11.</b></p>	\$
----	----------------------------------------------	----

19		<p><b>Marital adjustment.</b> If you are married, but are not filing jointly with your spouse, enter on Line 19 the total of any income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align: center;">a.</td> <td style="width:55%;"></td> <td style="width:5%; text-align: center;">\$</td> <td style="width:35%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td style="text-align: center;">\$</td> <td></td> </tr> </table> <p>Total and enter on Line 19.</p>	a.		\$		b.		\$		c.		\$		\$
a.		\$													
b.		\$													
c.		\$													
20		<p><b>Current monthly income for § 1325(b)(3).</b> Subtract Line 19 from Line 18 and enter the result.</p>													
21		<p><b>Annualized current monthly income for § 1325(b)(3).</b> Multiply the amount from Line 20 by the number 12 and enter the result.</p>	\$												
22		<p><b>Applicable median family income.</b> Enter the amount from Line 16.</p>	\$												
23		<p><b>Application of § 1325(b)(3).</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> <b>The amount on Line 21 is more than the amount on Line 22.</b> Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement.</p> <p><input type="checkbox"/> <b>The amount on Line 21 is not more than the amount on Line 22.</b> Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. <b>Do not complete Parts IV, V, or VI.</b></p>													
<b>Part IV. CALCULATION OF DEDUCTIONS FROM INCOME</b>															
<b>Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)</b>															
24		<p><b>National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous.</b> Enter in Line 24 the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable household size and level of gross monthly income. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) In the space below, check the appropriate box to indicate how you determined your gross monthly income.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="4">Gross monthly income determined using: <input type="checkbox"/> Line 11 <input type="checkbox"/> Line 14 <input type="checkbox"/> Schedule I</td> </tr> <tr> <td colspan="4"><input type="checkbox"/> Other (specify): _____</td> </tr> </table>	Gross monthly income determined using: <input type="checkbox"/> Line 11 <input type="checkbox"/> Line 14 <input type="checkbox"/> Schedule I				<input type="checkbox"/> Other (specify): _____				\$				
Gross monthly income determined using: <input type="checkbox"/> Line 11 <input type="checkbox"/> Line 14 <input type="checkbox"/> Schedule I															
<input type="checkbox"/> Other (specify): _____															
25A		<p><b>Local Standards: housing and utilities; non-mortgage expenses.</b> Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and household size. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court).</p>	\$												
25B		<p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and household size (this information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align: center;">a.</td> <td style="width:55%;">IRS Housing and Utilities Standards; mortgage/rent expense</td> <td style="width:5%; text-align: center;">\$</td> <td style="width:35%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47</td> <td style="text-align: center;">\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net mortgage/rental expense</td> <td></td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Housing and Utilities Standards; mortgage/rent expense	\$		b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$		c.	Net mortgage/rental expense		Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rent expense	\$													
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$													
c.	Net mortgage/rental expense		Subtract Line b from Line a.												
26		<p><b>Local Standards: housing and utilities; adjustment.</b> If you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <hr/> <hr/>	\$												

27	<p><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter the amount from IRS Transportation Standards, Operating Costs &amp; Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>	\$									
28	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width:35%; text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47</td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td style="text-align:right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
29	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> Complete this Line only if you checked the “2 or more” Box in Line 28.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width:35%; text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47</td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td style="text-align:right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
30	<p><b>Other Necessary Expenses: taxes.</b> Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social-security taxes, and Medicare taxes. <b>Do not include real estate or sales taxes.</b></p>	\$									
31	<p><b>Other Necessary Expenses: involuntary deductions for employment.</b> Enter the total average monthly deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as voluntary 401(k) contributions.</b></p>	\$									
32	<p><b>Other Necessary Expenses: life insurance.</b> Enter total average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b></p>	\$									
33	<p><b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. <b>Do not include payments on past due obligations included in Line 49.</b></p>	\$									
34	<p><b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.</p>	\$									
35	<p><b>Other Necessary Expenses: childcare.</b> Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. <b>Do not include other educational payments.</b></p>	\$									



36	<b>Other Necessary Expenses: health care.</b> Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents and that is not reimbursed by insurance or paid by a health savings account. <b>Do not include payments for health insurance or health savings accounts listed in Line 39.</b>	\$
37	<b>Other Necessary Expenses: telecommunication services.</b> Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. <b>Do not include any amount previously deducted.</b>	\$
38	<b>Total Expenses Allowed under IRS Standards.</b> Enter the total of Lines 24 through 37.	\$

**Subpart B: Additional Living Expense Deductions**

**Note: Do not include any expenses that you have listed in Lines 24-37**

39	<p><b>Health Insurance, Disability Insurance, and Health Savings Account Expenses.</b> List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 75%;">Health Insurance</td> <td style="width: 20%; text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Disability Insurance</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Health Savings Account</td> <td style="text-align: center;">\$</td> </tr> </table> <p>Total and enter on Line 39</p> <p><b>If you do not actually expend this total amount,</b> state your actual total average monthly expenditures in the space below: \$ _____</p>	a.	Health Insurance	\$	b.	Disability Insurance	\$	c.	Health Savings Account	\$	\$
a.	Health Insurance	\$									
b.	Disability Insurance	\$									
c.	Health Savings Account	\$									
40	<b>Continued contributions to the care of household or family members.</b> Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. <b>Do not include payments listed in Line 34.</b>	\$									
41	<b>Protection against family violence.</b> Enter the total average reasonably necessary monthly expenses that you actually incur to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	\$									
42	<b>Home energy costs.</b> Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. <b>You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.</b>	\$									
43	<b>Education expenses for dependent children under 18.</b> Enter the total average monthly expenses that you actually incur, not to exceed \$137.50 per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. <b>You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.</b>	\$									
44	<b>Additional food and clothing expense.</b> Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) <b>You must demonstrate that the additional amount claimed is reasonable and necessary.</b>	\$									
45	<b>Charitable contributions.</b> Enter the amount reasonably necessary for you to expend each month on charitable contributions in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2). <b>Do not include any amount in excess of 15% of your gross monthly income.</b>	\$									
46	<b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 39 through 45.	\$									

**Subpart C: Deductions for Debt Payment**

47	<p><b>Future payments on secured claims.</b> For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 47.</p>			
	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?
	a.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no
	b.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no
	c.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no
			Total: Add Lines a, b, and c	
				\$
48	<p><b>Other payments on secured claims.</b> If any of debts listed in Line 47 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 47, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.</p>			
	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount	
	a.		\$	
	b.		\$	
	c.		\$	
			Total: Add Lines a, b, and c	
				\$
49	<p><b>Payments on prepetition priority claims.</b> Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. <b>Do not include current obligations, such as those set out in Line 33.</b></p>			\$
50	<p><b>Chapter 13 administrative expenses.</b> Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.</p>			
	a.	Projected average monthly chapter 13 plan payment.	\$	
	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	x	
	c.	Average monthly administrative expense of chapter 13 case	Total: Multiply Lines a and b	
				\$
51	<p><b>Total Deductions for Debt Payment.</b> Enter the total of Lines 47 through 50.</p>			\$
<b>Subpart D: Total Deductions from Income</b>				
52	<p><b>Total of all deductions from income.</b> Enter the total of Lines 38, 46, and 51.</p>			\$
<b>Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)</b>				
53	<p><b>Total current monthly income.</b> Enter the amount from Line 20.</p>			\$
54	<p><b>Support income.</b> Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.</p>			\$

55	<b>Qualified retirement deductions.</b> Enter the monthly total of (a) all amounts withheld by your employer from wages as contributions for qualified retirement plans, as specified in § 541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19).	\$															
56	<b>Total of all deductions allowed under § 707(b)(2).</b> Enter the amount from Line 52.	\$															
57	<b>Deduction for special circumstances.</b> If there are special circumstances that justify additional expenses for which there is no reasonable alternative, describe the special circumstances and the resulting expenses in lines a-c below. If necessary, list additional entries on a separate page. Total the expenses and enter the total in Line 57. <b>You must provide your case trustee with documentation of these expenses and you must provide a detailed explanation of the special circumstances that make such expenses necessary and reasonable.</b>	\$															
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:75%;">Nature of special circumstances</th> <th style="width:20%;">Amount of expense</th> </tr> </thead> <tbody> <tr> <td style="text-align:center;">a.</td> <td></td> <td style="text-align:center;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td></td> <td style="text-align:center;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td></td> <td style="text-align:center;">\$</td> </tr> <tr> <td colspan="2" style="text-align:right;">Total: Add Lines a, b, and c</td> <td style="text-align:center;">\$</td> </tr> </tbody> </table>				Nature of special circumstances	Amount of expense	a.		\$	b.		\$	c.		\$	Total: Add Lines a, b, and c		\$
	Nature of special circumstances	Amount of expense															
a.		\$															
b.		\$															
c.		\$															
Total: Add Lines a, b, and c		\$															
58	<b>Total adjustments to determine disposable income.</b> Add the amounts on Lines 54, 55, 56, and 57 and enter the result.	\$															
59	<b>Monthly Disposable Income Under § 1325(b)(2).</b> Subtract Line 58 from Line 53 and enter the result.	\$															

**Part VI: ADDITIONAL EXPENSE CLAIMS**

60	<b>Other Expenses.</b> List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.																
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:75%;">Expense Description</th> <th style="width:20%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align:center;">a.</td> <td></td> <td style="text-align:center;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td></td> <td style="text-align:center;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td></td> <td style="text-align:center;">\$</td> </tr> <tr> <td colspan="2" style="text-align:right;">Total: Add Lines a, b, and c</td> <td style="text-align:center;">\$</td> </tr> </tbody> </table>				Expense Description	Monthly Amount	a.		\$	b.		\$	c.		\$	Total: Add Lines a, b, and c		\$
	Expense Description	Monthly Amount															
a.		\$															
b.		\$															
c.		\$															
Total: Add Lines a, b, and c		\$															

**Part VII: VERIFICATION**

61	I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this is a joint case, both debtors must sign.)</i>
Date: _____ Signature: _____ <span style="margin-left: 400px;">(Debtor)</span>	
Date: _____ Signature: _____ <span style="margin-left: 300px;">(Joint Debtor, if any)</span>	

## 2005-2007 COMMITTEE NOTE

**A. Overview**

Among the changes introduced by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was a set of interlocking provisions defining “current monthly income” and establishing a means test to determine whether relief under chapter 7 should be presumed abusive. Current monthly income (“CMI”) is defined in § 101(10A) of the Code, and the means test is set out in § 707(b)(2). These provisions have a variety of applications. In chapter 7, if the debtor’s CMI exceeds a defined level the debtor is subject to the means test, and § 707(b)(2)(C) specifically requires debtors to file a statement of CMI and calculations to determine the applicability of the means test presumption. In chapters 11 and 13, CMI provides the starting point for determining the disposable income that debtors may be required to pay to unsecured creditors. Moreover, chapter 13 debtors with CMI above defined median income levels are required by § 1325(b)(3) to use the deductions from income prescribed by the means test in order to determine what part of their income is “disposable,” and pursuant to § 1325(b)(4), the level of CMI determines the “applicable commitment period” over which projected disposable income must be paid to unsecured creditors.

To provide for the reporting and calculation of CMI and for the completion of the means test where required, three separate Official Forms have been created—one for chapter 7, one for chapter 11, and one for chapter 13. This note first describes the calculation of CMI that is common to all three of the forms, next describes the means test deductions set out in the chapter 7 and 13 forms, and finally addresses particular issues that are unique to each of the separate forms.

**B. Calculation of CMI**

Although chapters 7, 11, and 13 use CMI for different purposes, the basic computation is the same in each. As defined in § 101(10A), CMI is the monthly average of certain income that the debtor (and in a joint case, the debtor’s spouse) received in the six calendar months before the bankruptcy filing. The definition includes in this average (1) income from all sources, whether or not taxable, and (2) any amount paid by an entity other than the debtor (or the debtor’s spouse in a joint case) on a regular basis for the household expenses of the debtor, the debtor’s dependents, and (in a joint case) the debtor’s spouse if not otherwise a dependent. At the same time, the definition excludes from the averaged income “benefits received under the Social Security Act” and certain payments to victims of terrorism, war crimes, and crimes against humanity.

Each of the three forms provides for reporting income items constituting CMI. The items are reported in a set of entry lines—Part II of the form for chapter 7 and Part I of the forms for chapter 11 and chapter 13—that include separate columns for reporting income of the debtor and of the debtor’s spouse. The first of these entry lines includes a set of instructions and check boxes indicating when the “debtor’s spouse” column must be completed. The instructions also direct the required averaging of reported income.

The subsequent entry lines for income reporting specify several common types of income and are followed by a “catch-all” line for other income. The entry lines address (a) gross wages; (b) business income; (c) rental income; (d) interest, dividends, and royalties; (e) pension and retirement income; (f) regular payments of the household expenses of the debtor or the debtor’s dependents; (g) unemployment compensation, and (h) all other forms of income (the “catch-all” line).

Gross wages (before taxes) are required to be entered. However, consistent with usage in the Internal Revenue Manual and the American Community Survey of the Census Bureau, business and rental income are defined as gross receipts less ordinary and necessary expenses.

Unemployment compensation is given special treatment. Because the federal government provides funding for state unemployment compensation under the Social Security Act, there may be a dispute about whether unemployment compensation is a “benefit received under the Social Security Act.” The forms take no position on the merits of this argument, but give debtors the option of reporting unemployment compensation separately from the CMI calculation. This separate reporting allows parties in interest to determine the materiality of an exclusion of unemployment compensation and to challenge it.

Alimony and child support are also given special treatment. Child support is not generally considered “income” to the recipient. See 26 U.S.C. § 71(c). Thus, child support is only part of CMI if it is paid on a regular basis for the household expenses of the debtor or the debtor’s dependents. On the other hand, alimony and other forms of spousal support are considered income to the recipient, and thus are within CMI regardless of the regularity and use of the payments. To address this distinction, the instruction in the entry line for regular payments of household expenses directs that the entry include regular child support payments used for household expenses of the debtor or the debtor’s dependents, and the instruction for the “catch-all” line directs inclusion of all spousal support payments that are not otherwise reported as spousal income.

The forms provide for totaling the income reporting lines.

### **C. The means test: deductions from current monthly income**

The means test operates by deducting from CMI defined allowances for living expenses and payment of secured and priority debt, leaving disposable income presumptively available to pay unsecured non-priority debt. These deductions from CMI are set out in the Code at § 707(b)(2)(A)(ii)-(iv). The forms for chapter 7 and chapter 13 have similar sections (Parts V and IV, respectively) for calculating these deductions. The calculations are divided into subparts reflecting three different kinds of allowed deductions.

#### **1. Deductions under IRS standards**

Subpart A deals with deductions from CMI, set out in § 707(b)(2)(A)(ii), for “the debtor’s applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor’s actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides.” The forms provide entry lines for each of the specified expense deductions under the IRS standards, and instructions on the entry lines identify the website of the U.S. Trustee Program, where the relevant IRS allowances can be found. As with all of the deductions in § 707(b)(2)(A)(ii), deductions under the IRS standards are subject to the proviso that they not include “any payments for debts.”

*National Standards.* The IRS National Standards provide a single allowance for food, clothing, household supplies, personal care, and miscellany, depending on gross monthly income and household size: the higher the gross monthly income, and the larger the household size, the greater the deduction. Section 707(b)(2)(A)(ii) gives no indication of what “gross monthly income” should be used in determining the National Standard allowance. This income could be CMI, as calculated in previously in the forms, the monthly income reported on Schedule I, or some other measure. Recognizing this ambiguity, the forms require the debtor to specify what measure of gross monthly income was used, thus allowing a party to dispute the debtor’s choice.

*Local Standards.* The IRS Local Standards provide one set of deductions for housing and utilities and another set for transportation expenses, with different amounts for different areas of the country, depending on the size of the debtor’s household and the number of the debtor’s vehicles. Each of the amounts specified in the Local Standards are treated by the IRS as a cap on actual expenses, but because § 707(b)(2)(A)(ii) provides for deductions in the “amounts specified under the . . . Local Standards,” the forms treat these amounts as allowed deductions.

The Local Standards for housing and utilities, as published by the IRS for its internal purposes, present single amounts covering all housing expenses; however, for bankruptcy purposes, the IRS has provided the Executive Office for United States Trustees with information allowing a division of these amounts into a non-mortgage component and a mortgage/rent component. The non-mortgage component covers a variety of expenses involved in maintaining a residence, such as utilities, repairs and maintenance. The mortgage/rent component covers the cost of acquiring the residence. For homeowners with mortgages, the mortgage/rent component involves debt payment, since the cost of a mortgage is the basis for the allowance. Accordingly, the forms require debtors to deduct from the mortgage/rent component their average monthly mortgage payment, up to the full amount of the IRS mortgage/rent component, and instruct debtors that this average monthly payment is the one reported on the separate line of the forms for deductions of secured debt under § 707(b)(2)(a)(iii). The forms allow debtors to challenge the appropriateness of this method of computing the Local Standards allowance for housing and utilities and to claim any additional housing allowance to which they contend they are entitled, but the forms require specification of the basis for such a contention.

The IRS issues Local Standards for transportation in two components for its internal purposes as well as for bankruptcy: one component covers vehicle operation/public transportation expense and the other ownership/lease expense. The amount of the vehicle operation/public transportation allowance depends on the number of vehicles the debtor operates; debtors who do not operate vehicles are given a public transportation allowance. The instruction for this line item makes it clear that every debtor is thus entitled to some transportation expense allowance. No debt payment is involved in this allowance. The ownership/lease component, on the other hand, may involve debt payment. Accordingly, the forms require debtors to reduce the allowance for ownership/lease expense by the average monthly loan payment amount (principal and interest), up to the full amount of the IRS ownership/lease expense amount. This average payment is as reported on the separate line of the forms for deductions of secured debt under § 707(b)(2)(a)(iii). For purposes of the IRS ownership/lease allowance, the forms take no position on the question of whether the debtor must actually be making payments on a vehicle in order to claim the allowance.

*Other Necessary Expenses.* The IRS does not set out specific dollar allowances for “Other Necessary Expenses.” Rather, it specifies a number of categories for such expenses, and describes the nature of the expenses that may be deducted in each of these categories. Section 707(b)(2)(a)(ii) allows a deduction for the debtor’s actual expenses in these specified categories, subject to its requirement that payment of debt not be included. Several of the IRS categories deal with debt repayment and so are not included in the forms. Several other categories deal with expense items that are more expansively addressed by specific statutory allowances. Subpart A sets out the remaining categories of “Other Necessary Expenses” in individual entry lines. Instructions in these entry lines reflect limitations imposed by the IRS and the need to avoid inclusion of items deducted elsewhere on the forms.

Subpart A concludes with a subtotal of the deductions allowed under the IRS standards.

## **2. Additional statutory expense deductions**

In addition to the expense deductions allowed under the IRS standards, the means test makes provision—in subclauses (I), (II), (IV), and (V) of § 707(b)(2)(A)(ii)—for six special expense deductions. Each of these additional expense items is set out on a separate entry line in Subpart B, introduced by an instruction that tracks the statutory language and provides that there should not be double counting of any expense already included in the IRS deductions.

One of these special expense deductions presents a problem of statutory construction. Section 707(b)(2)(A)(ii)(I), after directing the calculation of the debtor’s monthly expenses under the IRS standards, states, “Such expenses shall include reasonably necessary health insurance, disability insurance, and health saving account expenses . . . .” There is no express statutory limitation to expenses actually incurred by the debtor, and so the provision appears to allow a reasonable “monthly expense” deduction for health

and disability insurance or a health savings account even if the debtor does not make such payments, similar to the way in which the National Standards give an allowance for food, clothing and personal care expenses without regard to the debtor's actual expenditures. However, the statutory language might also be read as providing that the debtor's "Other Necessary Expenses" should include reasonable insurance and health savings account payments. Since "Other Necessary Expenses" are limited to actual expenditures, such a limitation could thus be implied here. The forms deal with this ambiguity by allowing the debtor to claim a deduction for reasonable insurance and health savings account expenses even if not made, but also require a statement of the amount actually expended in these categories, thus allowing a challenge by any party who believes that only actual expenditures are properly deductible.

Contributions to tax-exempt charities provide another statutory expense deduction. Section 707(b)(1) provides that in considering whether a chapter 7 filing is an abuse, the court may not take into consideration "whether a debtor . . . continues to make [tax-exempt] charitable contributions." Section 1325(b)(2)(A)(ii) expressly allows a deduction from CMI for such contributions that are "reasonably necessary" (up to 15% of the debtor's gross income), and the Religious Liberty and Charitable Donation Clarification Act of 2005 added language to § 1325(b)(3) to provide the same deduction for above-median income debtors whose disposable income is determined using means test deductions. Accordingly, Subpart B of both the chapter 7 and chapter 13 forms includes an entry line for charitable contributions, employing the different statutory deductions allowed in each context.

The Subpart B concludes with a subtotal of the additional statutory expense deductions.

### **3. Deductions for payment of debt**

Subpart C deals with the means test's deductions from CMI for payment of secured and priority debt, as well as a deduction for administrative fees that would be incurred if the debtor paid debts through a chapter 13 plan.

In accord with § 707(b)(2)(A)(iii), the deduction for secured debt is divided into two entry lines—one for payments that are contractually due during the 60 months following the bankruptcy filing, the other for amounts needed to retain necessary collateral securing debts in default. In each situation, the instructions for the entry lines require dividing the total payment amount by 60, as the statute directs. The forms recognize another ambiguity in this connection: "payments contractually due" might either be understood as limited to payments of principal and interest (payable to secured creditor) or, in the context of a mortgage with an escrow, might be understood as including payments of property taxes and insurance (ultimately paid to taxing bodies and insurers, but initially payable to the mortgagee). The forms require the debtor to specify whether the amount deducted includes taxes and insurance, allowing a party in interest to inquire into the deduction and raise an objection.



Priority debt, deductible pursuant to § 707(b)(2)(A)(iv), is treated on a single entry line, also requiring division by 60. The instruction for this line makes clear that only past due priority debt—not anticipated debts—should be included. Thus, future support or tax obligations, and future fees that might be payable to a chapter 13 debtor’s attorney, are not included.

The defined deduction for the expenses of administering a chapter 13 plan is allowed by § 707(b)(2)(A)(ii)(III) only for debtors eligible for chapter 13. The forms treat this deduction in an entry line requiring the eligible debtor to state the amount of the prospective chapter 13 plan payment and multiply that payment amount by the percentage fee established for the debtor’s district by the Executive Office for United States Trustees. The forms refer debtors to the website of the U.S. Trustee Program to obtain this percentage fee.

The subpart concludes with a subtotal of debt payment deductions.

#### **4. Total deductions**

Finally, the forms direct that the subtotals from Subparts A, B, and C be added together to arrive at the total of allowed deductions from CMI under the means test.

#### **5. Additional claimed deductions**

The forms do not provide for means test deductions from CMI for expenses in categories that are not specifically identified as “Other Necessary Expenses” in the Internal Revenue Manual. However, debtors may wish to claim expenses that do not fall within the categories listed as “Other Necessary Expenses” in the forms. Part VII of the chapter 7 form and Part VI of the chapter 13 form provide for such expenses to be identified and totaled. Although expenses listed in these sections are not deducted from CMI for purposes of the means test calculation, the listing provides a basis for debtors to assert that these expenses should be deducted from CMI under § 707(b)(2)(A)(ii)(I), and that the results of the forms’ calculation should therefore be modified.

### **D. The chapter-specific forms**

#### **1. Chapter 7**

The chapter 7 form has several unique aspects. The form includes, in the upper right corner of the first page, a check box directing the debtor to state whether or not the calculations required by the form result in a presumption of abuse. The debtor is not bound by this statement and may argue, in response to a motion brought under § 707(b)(1), that there should be no presumption despite the calculations required by the form. The check box is intended to give clerks of court a conspicuous indication of the cases for which they are required to provide notice of a presumption of abuse pursuant to § 342(d).

Part I implements the provision of § 707(b)(2)(D) that excludes certain disabled veterans from all means testing, making it unnecessary to compute the CMI of such veterans. Debtors who declare under penalty of perjury that they are disabled veterans within the statutory definition are directed to verify their declaration in Part VII, to check the “no presumption” box at the beginning of the form, and to disregard the remaining parts of the form.

Part I also provides an exclusion for debtors who do not have primarily consumer debts. These debtors are not subject to any of the provisions of § 707(b)—including the requirement of § 707(b)(2)(C) for filing a CMI statement— since § 707(b) applies, by its terms, only to “an individual debtor . . . whose debts are primarily consumer debts.” However, a debtor may be found to have asserted non-consumer status incorrectly. Unless such a debtor has filed the CMI form within the 45 days after filing the case, the case could be subject to automatic dismissal under § 521(i). To avoid this possibility, debtors asserting principally non-consumer status may complete the appropriate portions of Part I, claim an exclusion from the balance of the form, and promptly file the form. If it is subsequently determined that the debtor does have primarily consumer debts, the form will have been filed within the deadline established by § 521(i), and can be amended to include the necessary CMI and means test information.

Part II computes CMI for purposes of the safe harbor of § 707(b)(7). Section 707(b)(7) prohibits a motion to dismiss based on the means test’s presumption of abuse if the debtor’s annualized CMI does not exceed a defined median state income. For this purpose, the statute directs that CMI of the debtor’s spouse be combined with the debtor’s CMI even if the debtor’s spouse is not a joint debtor, unless the debtor declares under penalty of perjury that the spouses are legally separated or living separately other than for purposes of evading the means test. Accordingly, the calculation of CMI in Part II directs a computation of the CMI of the debtor’s spouse not only in joint cases, but also in cases of married debtors who do not make the specified declaration, and the CMI of both spouses in these cases is combined for purposes of determining standing under § 707(b)(7).

Part III compares the debtor’s CMI to the applicable state median income for purposes of § 707(b)(7). It then directs debtors whose income does not exceed the applicable median to verify the form, to check the “no presumption” box at the beginning of the form, and not to complete the remaining parts of the form. Debtors whose CMI does exceed the applicable state median are required to complete the remaining parts of the form.

Part IV adjusts the CMI of a married debtor, not filing jointly, whose spouse’s CMI was combined with the debtor’s in Part II. The means test itself does not charge a married debtor in a non-joint case with the income of the non-filing spouse, but only with payments regularly made by that spouse for the household expenses of the debtor or the debtor’s dependents, as provided in the definition of CMI in § 101(10A). Accordingly, Part IV calls for the combined CMI of Part II to be reduced by the amount of the non-filing spouse’s income that was not regularly paid for the household expenses of the

debtor or the debtor's dependents. The form requires that the alternative uses of the spouse's income be specified.

Part V of the form provides for a calculation of the means test's deductions from the debtor's CMI, as described above in § C.

Part VI provides for a determination of whether the debtor's CMI, less the allowed deductions, gives rise to a presumption of abuse under § 707(b)(2)(A). Depending on the outcome of this determination, the debtor is directed to check the appropriate box at the beginning of the form and to sign the verification in Part VIII. Part VII allows the debtor to claim additional deductions, as discussed above in § C.5.

## **2. Chapter 11**

The chapter 11 form is the simplest of the three, since the means-test deductions of § 707(b)(2) are not employed in determining the extent of an individual chapter 11 debtor's disposable income. Section 1129(a)(15) requires payments of disposable income "as defined in section 1325(b)(2)," and that paragraph allows calculation of disposable income under judicially-determined standards, rather than pursuant to the means test deductions, specified for higher income chapter 13 debtors by § 1325(b)(3). However, § 1325(b)(2) does require that CMI be used as the starting point in the judicial determination of disposable income, and so the chapter 11 form requires this calculation (in Part I of the form), as described above, together with a verification (in Part II).

## **3. Chapter 13**

Like the chapter 7 form, the form for chapter 13 debtors contains a number of special provisions. The upper right corner of the first page includes check boxes requiring the debtor to state whether, under the calculations required by the statement, the applicable commitment period under § 1325(b)(4) is three years or five years and whether § 1325(b)(3) requires the means-test deductions to be used in determining the debtor's disposable income. The check box is intended to inform standing trustees and other interested parties about these items, but does not prevent the debtor from arguing that the calculations required by the form do not accurately reflect the debtor's disposable income.

Part I is a report of income to be used for determining CMI. In the absence of full payment of allowed unsecured claims, § 1325(b)(4) imposes a five-year applicable commitment period—rather than a three-year period—if the debtor's annualized CMI is not less than a defined median state income. For this purpose, as under § 707(b)(7), § 1325(b)(4) requires that the CMI of the debtor's spouse be combined with the debtor's CMI, but, unlike § 707(b)(7), no exception is made for spouses who are legally separated or living separately. Accordingly, the report of income in Part I directs a combined reporting of the income of both spouses in all cases of married debtors.

Part II computes the applicable commitment period by annualizing the income calculated in Part I and comparing it to the applicable state median. The form allows debtors to contend that the income of a non-filing spouse should not be treated as CMI and permits debtors to claim a deduction for any income of a non-filing spouse to the extent that this income was not regularly paid for the household expenses of the debtor or the debtor's dependents (with the alternative uses specified). The debtor is directed to check the appropriate box at the beginning of the form, stating the applicable commitment period. The check box does not prevent a debtor from proposing an applicable commitment period of less than three or five years in conjunction with a plan that pays all allowed unsecured claims in full.

Part III compares the debtor's CMI to the applicable state median, allowing a determination of whether the means-test deductions must be used, pursuant to § 1325(b)(3), in calculating disposable income. For this purpose, since § 1325(b)(3) does not provide for including the income of the debtor's spouse, the form directs a deduction of the income of a non-filing spouse that was not contributed to the household expenses of the debtor or the debtor's dependents. Again, the debtor is directed to check the appropriate box at the beginning of the form, indicating whether the means test deductions are applicable. If so, the debtor is directed to complete the remainder of the form. If not, the debtor is directed to complete the verification in Part VII but not complete the other parts of the form.

Part IV provides for calculation of the means-test deductions provided in § 707(b)(2), described above in § C, as incorporated by § 1325(b)(3) for debtors with CMI above the applicable state median.

Part V provides for four adjustments required by special provisions affecting disposable income in chapter 13. First, § 1325(b)(2) itself excludes from the CMI used in determining disposable income certain "child support payments, foster care payments, [and] disability payments for a dependent child." Because payments of this kind are included in the definition of CMI in § 101(10A), a line entry for deduction of these payments is provided. Second, a line entry is provided for deduction of contributions by the debtor to certain retirement plans, listed in § 541(b)(7)(B), since that provision states that such contributions "shall not constitute disposable income, as defined in section 1325(b)." Third, the same line entry also allows a deduction from disposable income for payments on loans from retirement accounts that are excepted from the automatic stay by § 362(b)(19), since § 1322(f) provides that for a "loan described in section 362(b)(19) . . . any amounts required to repay such loan shall not constitute 'disposable income' under section 1325." Finally, § 1325(b)(3) requires that deductions from income for above-median income debtors be determined not only in accordance with the means-test deductions, set out in subparagraph (A) of § 707(b)(2), but also in accordance with subparagraph (B), which sets out the grounds for rebutting a presumption of abuse based on a demonstration of additional expenses justified by special circumstances. Part V includes an entry line for such additional expenses, with a warning that the debtor will be required (as provided by § 707(b)(2)(B)) to document the expenses and provide a detailed explanation of the special circumstances that make them reasonable and necessary.

The chapter 13 form does not provide a deduction from disposable income for the chapter 13 debtor's anticipated attorney fees. No specific statutory allowance for such a deduction exists, and none appears necessary. Section 1325(b)(1)(B) requires that disposable income contributed to a chapter 13 plan be used to pay "unsecured creditors." A debtor's attorney who has not taken a security interest in the debtor's property is an unsecured creditor who may be paid from disposable income.

Part VI allows the debtor to declare expenses not allowed under the form without deducting them from CMI, as described above in § C.5.

# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## DEBTOR'S CERTIFICATION OF COMPLETION OF POSTPETITION INSTRUCTIONAL COURSE CONCERNING PERSONAL FINANCIAL MANAGEMENT

*Every individual debtor in a chapter 7, chapter 11 in which § 1141(d)(3) applies, or chapter 13 case must file this certification. If a joint petition is filed, each spouse must complete and file a separate certification. Complete one of the following statements and file by the deadline stated below:*

I, \_\_\_\_\_, the debtor in the above-styled case, hereby  
(Printed Name of Debtor)

certify that on \_\_\_\_\_ (Date), I completed an instructional course in personal financial management provided by \_\_\_\_\_, an approved personal financial management provider.  
(Name of Provider)

Certificate No. (if any): \_\_\_\_\_.

I, \_\_\_\_\_, the debtor in the above-styled case, hereby  
(Printed Name of Debtor)

certify that no personal financial management course is required because of *[Check the appropriate box.]*:

- Incapacity or disability, as defined in 11 U.S.C. § 109(h);
- Active military duty in a military combat zone; or

Residence in a district in which the United States trustee (or bankruptcy administrator) has determined that the approved instructional courses are not adequate at this time to serve the additional individuals who would otherwise be required to complete such courses.

Signature of Debtor: \_\_\_\_\_

Date: \_\_\_\_\_

*Instructions:* Use this form only to certify whether you completed a course in personal financial management. (Fed. R. Bankr. P. 1007(b)(7).) Do NOT use this form to file the certificate given to you by your prepetition credit counseling provider and do NOT include with the petition when filing your case.

*Filing Deadlines:* In a chapter 7 case, file within 45 days of the first date set for the meeting of creditors under § 341 of the Bankruptcy Code. In a chapter 11 or 13 case, file no later than the last payment made by the debtor as required by the plan or the filing of a motion for entry of a discharge under § 1328(b) of the Code. (See Fed. R. Bankr. P. 1007(c).)

2005-2007 COMMITTEE NOTE

The form was issued in 2005. Sections 727(a)(11), 1141(d)(3) and 1328(g)(1), which were added to the Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), require individual debtors to complete an instructional course concerning personal financial management as a condition for receiving a discharge. The completed form will signal the clerk that this condition has been satisfied. Each individual debtor, including both spouses in a joint case, must file a separate certification and provide the certificate number of the certificate of completion issued to the debtor by the approved personal financial management counselor. Instructions are included that state the deadlines for filing the certification in chapter 7, chapter 11 in which § 1141(d)(3) applies, and chapter 13 cases, and remind the debtor that the form is not to be used for filing a certification of prepetition credit counseling.

[Caption as described in Fed. R. Bankr. P. 7010 or 9004(b), as applicable.]

**CERTIFICATION TO COURT OF APPEALS  
BY ALL PARTIES**

A notice of appeal having been filed in the above-styled matter on \_\_\_\_\_ [Date], \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, [Names of all the appellants and all the appellees, if any], who are all the appellants [and all the appellees] hereby certify to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

Leave to appeal in this matter  is  is not required under 28 U.S.C. § 158(a).

*[If from a final judgment, order, or decree]* This certification arises in an appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the \_\_\_\_\_ District of \_\_\_\_\_ entered on \_\_\_\_\_ [Date].

*[If from an interlocutory order or decree]* This certification arises in an appeal from an interlocutory order or decree, and the parties hereby request leave to appeal as required by 28 U.S.C. § 158(a).

*[The certification shall contain one or more of the following statements, as is appropriate to the circumstances.]*

The judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States, or involves a matter of public importance.

*Or*

The judgment, order, or decree involves a question of law requiring resolution of conflicting decisions.

*Or*

An immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.



*[The parties may include or attach the information specified in Rule 8001(f)(3)(C).]*

Signed: *[If there are more than two signatories, all must sign and provide the information requested below. Attach additional signed sheets if needed.]*

\_\_\_\_\_  
Attorney for Appellant (or Appellant,  
if not represented by an attorney)

\_\_\_\_\_  
Attorney for Appellee (or Appellee  
if not represented by an attorney)

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

2005-2007 COMMITTEE NOTE

This form was issued in 2005. Rule 8001 requires that any certification of an appeal, bankruptcy court judgment, order, or decree directly to the United States Court of Appeals by all the appellants and appellees (if any) acting jointly be filed on this form.

United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**[NAME OF PROPONENT]'S PLAN OF REORGANIZATION, DATED [INSERT DATE]**

**ARTICLE I**  
**SUMMARY**

This Plan of Reorganization (the "Plan") under chapter 11 of the Bankruptcy Code (the "Code") proposes to pay creditors of [insert the name of the debtor] (the "Debtor") from [specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income].

This Plan provides for \_\_\_\_\_ classes of secured claims; \_\_\_\_\_ classes of unsecured claims; and \_\_\_\_\_ classes of equity security holders. Unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately \_\_\_\_\_ cents on the dollar. This Plan also provides for the payment of administrative and priority claims [if payment is not in full on the effective date of this Plan with respect to any such claim (to the extent permitted by the Code or the claimant's agreement), identify such claim and briefly summarize the proposed treatment.]

All creditors and equity security holders should refer to Articles III through VI of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

**ARTICLE II**  
**CLASSIFICATION OF CLAIMS AND INTERESTS**

- 2.01 Class 1. All allowed claims entitled to priority under § 507 of the Code (except administrative expense claims under § 507(a)(2), ["gap" period claims in an involuntary case under § 507(a)(3),] and priority tax claims under § 507(a)(8)).
- 2.02 Class 2. The claim of \_\_\_\_\_, to the extent allowed as a secured claim under § 506 of the Code.

[Add other classes of secured creditors, if any. Note: Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).]

2.03 Class 3. All unsecured claims allowed under § 502 of the Code.

[Add other classes of unsecured claims, if any.]

2.04 Class 4 . Equity interests of the Debtor. [If the Debtor is an individual, change this heading to “The interests of the individual Debtor in property of the estate.”]

**ARTICLE III**  
**TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS,**  
**U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS**

3.01 Unclassified Claims. Under section §1123(a)(1), administrative expense claims, [“gap” period claims in an involuntary case allowed under § 502(f) of the Code,] and priority tax claims are not in classes.

3.02 Administrative Expense Claims. Each holder of an administrative expense claim allowed under § 503 of the Code [, and a “gap” claim in an involuntary case allowed under § 502(f) of the Code,] will be paid in full on the effective date of this Plan (as defined in Article VII), in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

3.03 Priority Tax Claims. Each holder of a priority tax claim will be paid [specify terms of treatment consistent with § 1129(a)(9)(C) of the Code].

3.04 United States Trustee Fees. All fees required to be paid by 28 U.S.C. §1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the effective date of this Plan will be paid on the effective date.

**ARTICLE IV**  
**TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN**

4.01 Claims and interests shall be treated as follows under this Plan:

Class	Impairment	Treatment
Class 1 - Priority Claims	[State whether impaired or unimpaired.]	[Insert treatment of priority claims in this Class, including the form, amount and timing of distribution, if any. For example: "Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan as defined in Article VII, or the date on which such claim is allowed by a final non-appealable order. Except: _____."]
Class 2 – Secured Claim of [Insert name of secured creditor.]	[State whether impaired or unimpaired.]	[Insert treatment of secured claim in this Class, including the form, amount and timing of distribution, if any.] [Add class[es] of secured claims if applicable]
Class 3 - General Unsecured Creditors	[State whether impaired or unimpaired.]	[Insert treatment of unsecured creditors in this Class, including the form, amount and timing of distribution, if any.] [Add administrative convenience class if applicable]
Class 4 - Equity Security Holders of the Debtor	[State whether impaired or unimpaired.]	[Insert treatment of equity security holders in this Class, including the form, amount and timing of distribution, if any.]

**ARTICLE V**  
**ALLOWANCE AND DISALLOWANCE OF CLAIMS**

5.01 Disputed Claim. A disputed claim is a claim that has not been allowed or disallowed [by a final non-appealable order], and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

5.02 Delay of Distribution on a Disputed Claim. No distribution will be made on account of a disputed claim unless such claim is allowed [by a final non-appealable order].

5.03 Settlement of Disputed Claims. The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

**ARTICLE VI**  
**PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

6.01 Assumed Executory Contracts and Unexpired Leases.

(a) The Debtor assumes the following executory contracts and/or unexpired leases effective upon the [Insert “effective date of this Plan as provided in Article VII,” “the date of the entry of the order confirming this Plan,” or other applicable date]:

[List assumed executory contracts and/or unexpired leases.]

(b) The Debtor will be conclusively deemed to have rejected all executory contracts and/or unexpired leases not expressly assumed under section 6.01(a) above, or before the date of the order confirming this Plan, upon the [Insert “effective date of this Plan,” “the date of the entry of the order confirming this Plan,” or other applicable date]. A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than \_\_\_\_\_ ( ) days after the date of the order confirming this Plan.

**ARTICLE VII**  
**MEANS FOR IMPLEMENTATION OF THE PLAN**

[Insert here provisions regarding how the plan will be implemented as required under §1123(a)(5) of the Code. For example, provisions may include those that set out how the plan will be funded, as well as who will be serving as directors, officers or voting trustees of the reorganized debtor.]

**ARTICLE VIII**  
**GENERAL PROVISIONS**

8.01 Definitions and Rules of Construction. The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions: [Insert additional definitions if necessary].

8.02 Effective Date of Plan. The effective date of this Plan is the eleventh business day following the date of the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

**B25A (Official Form 25A) (12/08) - Cont.**

5

8.03 Severability. If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.04 Binding Effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

8.05 Captions. The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

[8.06 Controlling Effect. Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of \_\_\_\_\_ govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.]

[8.07 Corporate Governance. [If the Debtor is a corporation include provisions required by § 1123(a)(6) of the Code.]]

**ARTICLE IX**  
**DISCHARGE**

[If the Debtor is not entitled to discharge under 11 U.S.C. § 1141(d)(3) change this heading to “NO DISCHARGE OF DEBTOR.”]

9.01. **[Option 1 – If Debtor is an individual and § 1141(d)(3) is not applicable]**  
Discharge. Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

**[Option 2 -- If the Debtor is a partnership and section 1141(d)(3) of the Code is not applicable]**

Discharge. On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. The Debtor will not be discharged from any debt imposed by this Plan.

**[Option 3 -- If the Debtor is a corporation and § 1141(d)(3) is not applicable]**

**B25A (Official Form 25A) (12/08) - Cont.**

6

Discharge. On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt: (i) imposed by this Plan; (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure; or (iii) of a kind specified in § 1141(d)(6)(B).

**[Option 4 – If § 1141(d)(3) is applicable]**

No Discharge. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

**ARTICLE X  
OTHER PROVISIONS**

**[Insert other provisions, as applicable.]**

Respectfully submitted,

By: \_\_\_\_\_  
The Plan Proponent

By: \_\_\_\_\_  
Attorney for the Plan Proponent



## **Instructions for Small Business Plan of Reorganization Form**

### BACKGROUND AND GENERAL INSTRUCTIONS

1. This small business chapter 11 plan of reorganization form is promulgated pursuant to § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. It may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor under § 101(51D) of the Code. This form is intended to be used in conjunction with the small business chapter 11 disclosure statement form (Official Form 25B). Because the type of debtor and the details of the proposed plan will vary from case to case, this form is intended to provide an illustrative format, rather than a specific prescription for the language or content of a plan in any particular case.
2. Some language in this form appears in brackets. The bracketed language sometimes instructs the plan's proponent to provide certain information and sometimes provides optional or alternative language that should be used when and where appropriate. Proponents should make the necessary insertions and/or delete inapplicable language.

### SPECIFIC INSTRUCTIONS

#### SUMMARY

3. The first article should provide a summary of the debtor's proposed plan. It should describe the manner in which the plan will be consummated and the source of funds for payments to be made under the plan. These sources might include an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income. The summary should also describe the treatment of the various classes of claimants under the plan.

#### CLASSIFICATION OF CLAIMS AND INTERESTS

4. The second article describes each class of claimants that will receive a distribution under the plan. The first class consists of claimants entitled to priority pursuant to § 507 of the Code other than those entitled to priority under § 507(a)(2), (3), or (8). The next class or group of classes consists of creditor(s) with allowed secured claims. Secured creditors are usually classified individually, with each secured creditor being placed in its own separate class. Classes of secured creditors should be added as necessary. Next, unsecured claimants, not entitled to priority, should be classified. The proponent may, to the extent allowed by law, create additional classes of unsecured claims, including an administrative convenience class pursuant to

§1122(b) of the Code. The last class consists of equity security holders of the debtor. If the debtor is an individual, this class consists of the interests of the individual Debtor in property of the estate.

#### TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS

5. The treatment of certain claims, such as administrative expense claims, allowed under § 503 of the Code, and priority tax claims, allowed under §507(a)(8) of the Code, is statutorily specified. These claims are not, therefore, placed into classes. Their treatment is described in the third article.

#### TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

6. The fourth article specifies the treatment accorded the various classes of claims and interests provided for under the plan.
7. Priority claimants other than those allowed under §§ 503 and 507(a)(8) must be classified and paid in full under the plan unless the claimant agrees otherwise.
8. Each secured creditor is generally placed in its own class, with a particular treatment specified for that class. Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).
9. The plan should describe the treatment of the general unsecured claims. An administrative convenience class may be created pursuant to § 1122(b) of the Code, and other classes of unsecured claims may be created to the extent permitted by applicable law.
10. Finally, the plan should describe the treatment of equity securities.

#### ALLOWANCE AND DISALLOWANCE OF CLAIMS

11. The fifth article addresses the treatment of disputed claims. A “disputed claim” is a claim that has not been allowed or disallowed. No distribution will be made on account of a disputed claim unless such claim is allowed. The debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019.

#### PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

12. The sixth article deals with executory contracts and unexpired leases. The plan proponent should list all executory contracts and unexpired leases that it has already assumed, or which it intends to assume under the plan. All other executory contracts will be deemed rejected.
13. The seventh article describes how the plan will be implemented. It should

indicate the source of any funds that will be used to pay claims and interests under the plan, and it should also list the persons who will be serving as the management of the debtor after the plan is confirmed.

#### GENERAL PROVISIONS

14. The eighth article provides certain general provisions. Definitions from the Code are incorporated by reference, and any other definitions required by the plan should be listed in section 7.01 of the plan. If a governing law clause is desired, it should be included here, and if the debtor is a corporation, provisions required by §1123(a)(6) of the Code should be included.

#### DISCHARGE

15. The ninth article describes the effect of discharge under the plan. When and whether the debtor is entitled to a discharge will depend, among other things, upon whether the debtor is an individual, partnership, or corporation, and whether the debtor is continuing in business after consummation of the plan. The proponent should choose the appropriate language from the options provided.

#### OTHER PROVISIONS

16. To the extent that other provisions, not provided in the plan, are desired, they should be placed in the tenth article.

COMMITTEE NOTE

This form is new. It implements § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). This form for a small business chapter 11 plan of reorganization may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor under § 101(51D) of the Code. The form is intended to be used in conjunction with the small business chapter 11 disclosure statement form (Official Form 25B).

Because the type of debtor and the details of the proposed plan of reorganization may vary, the form is intended to provide an illustrative format, rather than a specific prescription for the language or content of a plan in any particular case. The form includes instructions and examples of the types of information needed to complete it.

United States Bankruptcy Court  
District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**[NAME OF PLAN PROONENT]'S DISCLOSURE STATEMENT, DATED [INSERT DATE]**

*Table of Contents*

[Insert when text is finalized]

## I. INTRODUCTION

This is the disclosure statement (the “Disclosure Statement”) in the small business chapter 11 case of \_\_\_\_\_ (the “Debtor”). This Disclosure Statement contains information about the Debtor and describes the [insert name of plan] (the “Plan”) filed by [the Debtor] on [insert date]. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

The proposed distributions under the Plan are discussed at pages \_\_ - \_\_ of this Disclosure Statement. [General unsecured creditors are classified in Class \_\_, and will receive a distribution of \_\_ % of their allowed claims, to be distributed as follows \_\_\_\_\_.]

### A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
- Why [the Proponent] believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

### B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

#### 1. *Time and Place of the Hearing to [Finally Approve This Disclosure Statement and] Confirm the Plan*

The hearing at which the Court will determine whether to [finally approve this Disclosure Statement and] confirm the Plan will take place on [insert date], at [insert time], in Courtroom \_\_\_\_\_, at the [Insert Courthouse Name, and Full Court Address, City, State, Zip Code].

#### 2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to [insert address]. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by [insert date] or it will not be counted.

3. *Deadline For Objecting to the [Adequacy of Disclosure and] Confirmation of the Plan*

Objections to [this Disclosure Statement or to] the confirmation of the Plan must be filed with the Court and served upon [insert entities] by [insert date].

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact [insert name and address of representative of plan proponent].

**C. Disclaimer**

*The Court has [conditionally] approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. [The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until \_\_\_\_\_.]*

**II. BACKGROUND**

**A. Description and History of the Debtor's Business**

The Debtor is a [corporation, partnership, etc.]. Since [insert year operations commenced], the Debtor has been in the business of \_\_\_\_\_. [Describe the Debtor's business].

**B. Insiders of the Debtor**

[Insert a detailed list of the names of Debtor's insiders as defined in §101(31) of the United States Bankruptcy Code (the "Code") and their relationship to the Debtor. For each insider, list all compensation paid by the Debtor or its affiliates to that person or entity during the two years prior to the commencement of the Debtor's bankruptcy case, as well as compensation paid during the pendency of this chapter 11 case.]

**C. Management of the Debtor Before and During the Bankruptcy**

During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor (collectively the "Managers") were [List the Managers of the Debtor prior to the petition date].

The Managers of the Debtor during the Debtor’s chapter 11 case have been: [List Managers of the Debtor during the Debtor’s chapter 11 case.]

After the effective date of the order confirming the Plan, the directors, officers, and voting trustees of the Debtor, any affiliate of the Debtor participating in a joint Plan with the Debtor, or successor of the Debtor under the Plan (collectively the “Post Confirmation Managers”), will be: [List Post Confirmation Managers of the Debtor.] The responsibilities and compensation of these Post Confirmation Managers are described in section \_\_ of this Disclosure Statement.

**D. Events Leading to Chapter 11 Filing**

[Describe the events that led to the commencement of the Debtor’s bankruptcy case.]

**E. Significant Events During the Bankruptcy Case**

[Describe significant events during the Debtor’s bankruptcy case:

- Describe any asset sales outside the ordinary course of business, debtor in possession financing, or cash collateral orders.
- Identify the professionals approved by the court.
- Describe any adversary proceedings that have been filed or other significant litigation that has occurred (including contested claim disallowance proceedings), and any other significant legal or administrative proceedings that are pending or have been pending during the case in a forum other than the Court.
- Describe any steps taken to improve operations and profitability of the Debtor.
- Describe other events as appropriate.]

**F. Projected Recovery of Avoidable Transfers [Choose the option that applies]**

**[Option 1 – If the Debtor does not intend to pursue avoidance actions]**

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

**[Option 2 – If the Debtor intends to pursue avoidance actions]**

The Debtor estimates that up to \$ \_\_\_\_\_ may be realized from the recovery of fraudulent, preferential or other avoidable transfers. While the results of litigation cannot be predicted with certainty and it is possible that other causes of action may be identified, the following is a summary of the preference, fraudulent conveyance and other avoidance actions filed or expected to be filed in this case:

Transaction	Defendant	Amount Claimed

**[Option 3 – If the Debtor does not yet know whether it intends to pursue avoidance actions]**



The Debtor has not yet completed its investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

#### **G. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

#### **H. Current and Historical Financial Conditions**

The identity and fair market value of the estate's assets are listed in Exhibit B. [Identify source and basis of valuation.]

The Debtor's most recent financial statements [if any] issued before bankruptcy, each of which was filed with the Court, are set forth in Exhibit C.

[The most recent post-petition operating report filed since the commencement of the Debtor's bankruptcy case are set forth in Exhibit D.] [A summary of the Debtor's periodic operating reports filed since the commencement of the Debtor's bankruptcy case is set forth in Exhibit D.]

### **III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

#### **A. What is the Purpose of the Plan of Reorganization?**

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

#### **B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

##### *1. Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

<b>Type</b>	<b>Estimated Amount Owed</b>	<b>Proposed Treatment</b>
Expenses Arising in the Ordinary Course of Business After the Petition Date		Paid in full on the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date		Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court.		Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan
Clerk's Office Fees		Paid in full on the effective date of the Plan
Other administrative expenses		Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees		Paid in full on the effective date of the Plan
<b>TOTAL</b>		

2. *Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	Estimated Amount Owed	Date of Assessment	Treatment
			Pmt interval = [Monthly] payment = Begin date = End date = Interest Rate % = Total Payout Amount =\$
			Pmt interval = [Monthly] payment = Begin date = End date = Interest Rate % = Total Payout Amount =\$

**C. Classes of Claims and Equity Interests**

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. *Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will [be classified as a general unsecured claim].

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

Class #	Description	Insider? (Yes or No)	Impairment	Treatment
	<i>Secured claim of:</i> Name = _____  Collateral description = _____  Allowed Secured Amount = \$ _____  Priority of lien = _____  Principal owed = \$ _____ Pre-pet. arrearage = \$ _____  Total claim = \$ _____		[State whether impaired or unimpaired]	[Monthly] Pmt = _____  Pmts Begin = _____  Pmts End = _____  [Balloon pmt] = _____  Interest rate % = _____  Treatment of Lien = _____  [Additional payment required to cure defaults] = _____
	<i>Secured claim of:</i> Name = _____  Collateral description = _____  Allowed Secured Amount = \$ _____  Priority of lien = _____  Principal owed = \$ _____ Pre-pet. arrearage = \$ _____  Total claim = \$ _____		[State whether impaired or unimpaired]	Monthly Pmt = _____  Pmts Begin = _____  Pmts End = _____  [Balloon pmt] = _____  Interest rate % = _____  Treatment of Lien = _____  [Additional payment required to cure defaults] = _____

2. *Classes of Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

Class #	Description	Impairment	Treatment
	Priority unsecured claim pursuant to Section [insert]  Total amt of claims = \$	[State whether impaired or unimpaired]	
	Priority unsecured claim pursuant to Section [insert]  Total amt of claims = \$	[State whether impaired or unimpaired]	

3. *Class[es] of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. [Insert description of §1122(b) convenience class if applicable.]

The following chart identifies the Plan's proposed treatment of Class[es] \_\_ through \_\_, which contain general unsecured claims against the Debtor:

Class #	Description	Impairment	Treatment
	[1122(b) Convenience Class]	[State whether impaired or unimpaired]	[Insert proposed treatment, such as "Paid in full in cash on effective date of the Plan or when due under contract or applicable nonbankruptcy law"]
	General Unsecured Class	[State whether impaired or unimpaired]	Monthly Pmt = Pmts Begin = Pmts End = [Balloon pmt] = Interest rate % from [date] = Estimated percent of claim paid =

4. *Class[es] of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company (“LLC”), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan's proposed treatment of the class[es] of equity interest holders: [There may be more than one class of equity interests in, for example, a partnership case, or a case where the prepetition debtor had issued multiple classes of stock.]

Class #	Description	Impairment	Treatment
	Equity interest holders	[State whether impaired or unimpaired]	

**D. Means of Implementing the Plan**

1. *Source of Payments*

Payments and distributions under the Plan will be funded by the following:

[Describe the source of funds for payments under the Plan.]

2. *Post-confirmation Management*

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Name	Affiliations	Insider (yes or no)?	Position	Compensation

**E. Risk Factors**

The proposed Plan has the following risks:

[List all risk factors that might affect the Debtor’s ability to make payments and other distributions required under the Plan.]

**F. Executory Contracts and Unexpired Leases**

The Plan, in Exhibit 5.1, lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. Exhibit 5.1 also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Exhibit 5.1 will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

***[The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is \_\_\_\_\_. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.]***

#### **G. Tax Consequences of Plan**

***Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.***

The following are the anticipated tax consequences of the Plan: [List the following general consequences as a minimum: (1) Tax consequences to the Debtor of the Plan; (2) General tax consequences on creditors of any discharge, and the general tax consequences of receipt of plan consideration after confirmation.]

#### **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

### A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes \_\_\_\_\_ are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes \_\_\_\_\_ are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

#### 1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

*The deadline for filing a proof of claim in this case was \_\_\_\_\_.*

*[If applicable – The deadline for filing objections to claims is \_\_\_\_\_.]*

#### 2. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

#### 3. *Who is Not Entitled to Vote*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;



- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

***Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan [and to the Adequacy of the Disclosure Statement].***

4. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

**B. Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes, as discussed later in Section [B.2.].

1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

***You should consult your own attorney if a “cramdown” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.***

### C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit E.

### D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

#### 1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as Exhibit F.

#### 2. *Ability to Make Future Plan Payments And Operate Without Further Reorganization*

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan Proponent has provided projected financial information. Those projections are listed in Exhibit G.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$ \_\_\_\_\_. The final Plan payment is expected to be paid on \_\_\_\_\_.

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience. Explain why such assumptions should now be made.]

***You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.***

## V. EFFECT OF CONFIRMATION OF PLAN

A. **DISCHARGE OF DEBTOR** [If the Debtor is not entitled to discharge pursuant to 11 U.S.C. § 1141(d)(3) change this heading to “**NO DISCHARGE OF DEBTOR.**”]

**[Option 1 – If Debtor is an individual and § 1141(d)(3) is not applicable]**

Discharge. Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the Plan, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

**[Option 2 -- If the Debtor is a partnership and § 1141(d)(3) of the Code is not applicable]**

Discharge. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. However, the Debtor shall not be discharged from any debt imposed by the Plan. After the effective date of the Plan your claims against the Debtor will be limited to the debts imposed by the Plan.

**[Option 3 -- If the Debtor is a corporation and § 1141(d)(3) is not applicable]**

Discharge. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

**[Option 4 – If § 1141(d)(3) is applicable]**

No Discharge. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

**B. Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

[If the Debtor is not an individual, add the following: “The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.”]

[If the Debtor is an individual, add the following: “Upon request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to (1) increase or reduce the amount of payments under the Plan on claims of a particular class, (2) extend or reduce the time period for such payments, or (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.”]

**C. Final Decree**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

**VI. OTHER PLAN PROVISIONS**

[Insert other provisions here, as necessary and appropriate.]

---

[Signature of the Plan Proponent]

---

[Signature of the Attorney for the Plan Proponent]

**EXHIBITS**

**Exhibit A – Copy of Proposed Plan of Reorganization**

**Exhibit B – Identity and Value of Material Assets of Debtor**

**Exhibit C – Prepetition Financial Statements**  
(to be taken from those filed with the court)



**Exhibit D** – [Most Recently Filed Postpetition Operating Report][Summary of Postpetition Operating Reports]

**Exhibit E – Liquidation Analysis**

***Plan Proponent’s Estimated Liquidation Value of Assets***

**Assets**

a. Cash on hand	\$
b. Accounts receivable	\$
c. Inventory	\$
d. Office furniture & equipment	\$
e. Machinery & equipment	\$
f. Automobiles	\$
g. Building & Land	\$
h. Customer list	\$
i. Investment property (such as stocks, bonds or other financial assets)	\$
j. Lawsuits or other claims against third-parties	\$
k. Other intangibles (such as avoiding powers actions)	\$

***Total Assets at Liquidation Value*** \$

**Less:**

Secured creditors’ recoveries \$

**Less:**

Chapter 7 trustee fees and expenses \$

**Less:**

Chapter 11 administrative expenses \$

**Less:**

Priority claims, excluding administrative expense claims \$

**[Less:**

Debtor’s claimed exemptions] \$

(1) Balance for unsecured claims \$

(2) Total dollar amount of unsecured claims \$

***Percentage of Claims Which Unsecured Creditors Would Receive Or Retain in a Chapter 7 Liquidation:*** \$

***Percentage of Claims Which Unsecured Creditors Will Receive or Retain under the Plan:*** \_\_\_\_\_ % [Divide (1) by (2)]

\_\_\_\_\_ %

**Exhibit F – Cash on hand on the effective date of the Plan**

<b>Cash on hand on effective date of the Plan:</b>	<b>\$</b>
<i>Less –</i>	
Amount of administrative expenses payable on effective date of the Plan	-
Amount of statutory costs and charges	-
Amount of cure payments for executory contracts	-
Other Plan Payments due on effective date of the Plan	-
	<b>\$</b>
Balance after paying these amounts.....	

The sources of the cash Debtor will have on hand by the effective date of the Plan are estimated as follows:

\$	Cash in Debtor's bank account now
+	Additional cash Debtor will accumulate from net earnings between now and effective date of the Plan [state the basis for such projections]
+	Borrowing [separately state terms of repayment]
+	Capital Contributions
+	Other
\$	Total [This number should match "cash on hand" figure noted above]

**Exhibit G – Projections of Cash Flow and Earnings for Post-Confirmation Period**

## Instructions for Form Disclosure Statement

### BACKGROUND AND GENERAL INSTRUCTIONS

1. This small business chapter 11 disclosure statement form is promulgated pursuant to § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This form may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor within the meaning of § 101(51D) of the Code. This form provides a format for disseminating to parties in interest information about the plan of reorganization in a debtor's small business chapter 11 case, so that those parties can make reasonably informed judgments whether to accept, reject or object to the plan. Because the relevant legal requirements for and effects of a plan's confirmation may vary depending on the nature of the debtor, and because the details of any proposed reorganization necessarily vary, this form is intended to provide a format for disclosure, rather than a specific prescription for the language or content of a disclosure statement in any particular case. The form highlights the factual and legal disclosures required by § 1125 of the Code in connection with the plan's confirmation. It is not intended to restrict the plan's proponent from providing additional information where that would be useful.
2. Proponents are encouraged to present material information in as clear a fashion as possible, including, where feasible, in an accompanying executive summary, approved by the court, that highlights particular creditors' or interest holders' voting status and treatment under the plan.
3. Some language in this form appears in brackets. The bracketed language sometimes instructs the plan's proponent to provide certain information, and sometimes provides optional or alternative language that should be used when and where appropriate. Proponents should make the necessary insertions and/or delete inapplicable language.

### SPECIFIC INSTRUCTIONS

#### INTRODUCTORY SECTION

4. The introductory section describes the purpose of the disclosure statement, provides procedural information regarding confirmation of the plan, including where to obtain additional information, indicates whether particular claimants or interest holders will be entitled to vote on the plan, and details the procedures and deadlines for filing objections to confirmation of the plan. A copy of the plan should be attached to the debtor's disclosure statement as

Exhibit A. Where the proposed distribution to unsecured creditors and other classes can be succinctly summarized, describe that distribution in the second introductory paragraph.

5. In some cases, the court will approve the debtor's disclosure statement prior to solicitation of acceptance or rejection of the plan. See Rule 3017. In other cases, the court may conditionally approve the disclosure statement, and combine the hearing on the adequacy of disclosure and the hearing on confirmation of the plan into one hearing. See Rule 3017.1. Use the bracketed language as appropriate in subsections I.B. and I.C.

#### BACKGROUND SECTION

6. The second part of disclosure statement provides a history of the debtor's business, both before and during the debtor's bankruptcy case. In this section, the plan proponent should describe the debtor's business, the events that led to the filing of the debtor's bankruptcy petition, and the key events in the debtor's bankruptcy case, and identify the people who managed the debtor during the case and who will manage the debtor after the plan is confirmed. The proponent should disclose its intentions with regard to, and the status of, avoidance actions. If the debtor or proponent intends to bring an avoidance action against a particular creditor or equity interest holder, the disclosure statement should disclose this fact so that the creditor or equity interest holder can use that information to determine the value of its claim or interest when considering whether to accept or reject the plan. If the debtor or plan proponent is uncertain as to what avoidance actions might be brought, that fact should be disclosed as well, so that claimants and equity interest holders can take that information into account, as well, when considering whether to accept or reject the plan.
7. A schedule of the debtor's material assets, along with the basis for their valuation should be attached to the debtor's disclosure statement as Exhibit B. Under § 1116 of the Code, the debtor must also file its most recent prepetition financial statements with the petition. These financial statements should be attached to the debtor's disclosure statement as Exhibit C.
8. Sections 434 and 435 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, and § 308 of the Code require the debtor to file periodic operating reports with the court. The most recent such reports, or a summary of the filed reports, should be attached to the debtor's disclosure statement as Exhibit D.

## SUMMARY OF PLAN

9. The third part of the disclosure statement describes the treatment of various creditors and equity interest holders who will receive distributions under the plan. Because the treatment of certain claims, such as administrative expense claims, allowed under § 503 of the Code, and priority tax claims, allowed under § 507(a)(8) of the Code, is statutorily specified, these claims are not placed into classes. Secured creditors are generally each placed in their own class, with the particular treatment specified for that class. Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8) of the Code. While it is not required, the proponent may, where applicable, wish to classify claims under § 507(a)(9) and (10) of the Code. Finally, the disclosure statement should describe the treatment of the general unsecured claimants and equity interest holders. An administrative convenience class may be created pursuant to § 1122(b) of the Code, and other classes of unsecured claims may be created to the extent permitted by applicable case law. Also, while the suggested language of the form contemplates that plan distributions will be in the form of monthly payments, other forms of consideration are permitted and this section of the disclosure statement should be modified to describe clearly the form(s), methods and timing of payments to be made under the particular plan.
10. The disclosure statement should also detail the sources of funds for payments to be made under the plan. These should include the sources of funds for payments to be made on the effective date of the plan (detailed in Exhibit F), and the source of payments that will be made over the life of the plan. The description should be supported by projections about the income and profitability of the debtor. The plan proponent must also fully describe post-confirmation management, as required by § 1129(a)(5) of the Code. The disclosure statement should also describe any risk factors that might influence the debtor's ability to complete the payments or affect the value of the distributions provided for under the plan. Also, the disclosure statement should list any material executory contracts that will be assumed pursuant to the plan, as well as any material contracts that will be rejected. To the extent possible, the tax consequences of the plan should also be summarized.

## CONFIRMATION REQUIREMENTS AND PROCEDURES SECTION

11. The fourth part of the disclosure statement sets forth the procedures and requirements for confirmation. In this regard, the disclosure statement should inform creditors and equity interest holders of (1) which class they are in, (2) whether they are entitled to vote, and (3) the amount of their claim allowed for voting purposes. This may be accomplished in the disclosure statement itself or, as noted above, in a summary statement, approved by the court, and sent to

the parties in interest along with the disclosure statement. A liquidation analysis of the debtor should be attached to the disclosure statement as Exhibit E. As noted above, the sources of funds for payments to be made on the effective date of the plan should be detailed in Exhibit F, and projections about the profitability and cash flow of the debtor's business after confirmation should be attached to the disclosure statement as Exhibit G.

#### EFFECT OF PLAN CONFIRMATION

12. The fifth part of the disclosure statement describes the effect of plan confirmation. The language used here should be chosen with care, as the effect of confirmation differs depending on whether the debtor is an individual, partnership, or corporation, and on whether the debtor will continue in business post-confirmation or will, instead, be liquidated.
13. If the plan provides that, after its confirmation, property of the estate will vest in and be distributed by someone other than the debtor, the disclosure statement should identify any such property and the person in whom the property will vest.

#### OTHER PROVISIONS

14. Other provisions may be added in Part VI as desired and appropriate.



COMMITTEE NOTE

This form is new. It implements § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), which provides for an official form for a disclosure statement that may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor under § 101(51D) of the Code. The form provides a format for disseminating information to parties in interest about the plan of reorganization in a small business debtor's chapter 11 case, so that a party can make a reasonably informed judgment whether to accept, reject, or object to a proposed plan of reorganization or liquidation.

The form is intended to be used in conjunction with the form small business chapter 11 plan (Official Form 25A). As required by § 433 of the 2005 Act, the form seeks to strike a practical balance between the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information, on the one hand, and economy and simplicity for debtors, on the other. The form includes instructions and examples of the types of information needed to complete it.

Because the relevant legal requirements for, and effect of, a plan's confirmation may vary depending on the nature of the debtor and the details of the proposed plan, this form is intended to provide an illustrative format for disclosure, rather than a specific prescription for the language or content of a particular disclosure statement. The form highlights the factual and legal disclosures required for adequate disclosure under § 1125 of the Code. The form is not intended to restrict a plan proponent from providing additional information where that would be useful. Plan proponents are encouraged to present material information in as clear a manner as possible, including, where feasible, by providing an accompanying executive summary, approved by the court, that highlights particular creditors' or interest holders' voting status and treatment under the plan.

Rule 3016 specifies the manner in which the disclosure statement is to be filed. Rule 3017 specifies the manner in which the court will consider it. Rule 3017.1 specifies special procedures for the court's conditional approval of a disclosure statement in a small business case.

United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**SMALL BUSINESS MONTHLY OPERATING REPORT**

Month: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Line of Business: \_\_\_\_\_

NAICS Code: \_\_\_\_\_

IN ACCORDANCE WITH TITLE 28, SECTION 1746, OF THE UNITED STATES CODE, I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE FOLLOWING SMALL BUSINESS MONTHLY OPERATING REPORT AND THE ACCOMPANYING ATTACHMENTS AND, TO THE BEST OF MY KNOWLEDGE, THESE DOCUMENTS ARE TRUE, CORRECT AND COMPLETE.

RESPONSIBLE PARTY:

\_\_\_\_\_  
ORIGINAL SIGNATURE OF RESPONSIBLE PARTY

\_\_\_\_\_  
PRINTED NAME OF RESPONSIBLE PARTY

**QUESTIONNAIRE: (All questions to be answered on behalf of the debtor.)**

**YES NO**

- 1. IS THE BUSINESS STILL OPERATING?  YES  NO
- 2. HAVE YOU PAID ALL YOUR BILLS ON TIME THIS MONTH?  YES  NO
- 3. DID YOU PAY YOUR EMPLOYEES ON TIME?  YES  NO
- 4. HAVE YOU DEPOSITED ALL THE RECEIPTS FOR YOUR BUSINESS INTO THE DIP ACCOUNT THIS MONTH?  YES  NO
- 5. HAVE YOU FILED ALL OF YOUR TAX RETURNS AND PAID ALL OF YOUR TAXES THIS MONTH?  YES  NO
- 6. HAVE YOU TIMELY FILED ALL OTHER REQUIRED GOVERNMENT FILINGS?  YES  NO
- 7. HAVE YOU PAID ALL OF YOUR INSURANCE PREMIUMS THIS MONTH?  YES  NO
- 8. DO YOU PLAN TO CONTINUE TO OPERATE THE BUSINESS NEXT MONTH?  YES  NO
- 9. ARE YOU CURRENT ON YOUR QUARTERLY FEE PAYMENT TO THE U.S. TRUSTEE?  YES  NO
- 10. HAVE YOU PAID ANYTHING TO YOUR ATTORNEY OR OTHER PROFESSIONALS THIS MONTH?  YES  NO
- 11. DID YOU HAVE ANY UNUSUAL OR SIGNIFICANT UNANTICIPATED EXPENSES THIS MONTH?  YES  NO
- 12. HAS THE BUSINESS SOLD ANY GOODS OR PROVIDED SERVICES OR TRANSFERRED ANY ASSETS TO ANY BUSINESS RELATED TO THE DIP IN ANY WAY?  YES  NO

- 13. DO YOU HAVE ANY BANK ACCOUNTS OPEN OTHER THAN THE DIP ACCOUNT?
- 14. HAVE YOU SOLD ANY ASSETS OTHER THAN INVENTORY THIS MONTH?
- 15. DID ANY INSURANCE COMPANY CANCEL YOUR POLICY THIS MONTH?
- 16. HAVE YOU BORROWED MONEY FROM ANYONE THIS MONTH?
- 17. HAS ANYONE MADE AN INVESTMENT IN YOUR BUSINESS THIS MONTH?
- 18. HAVE YOU PAID ANY BILLS YOU OWED BEFORE YOU FILED BANKRUPTCY?

**TAXES**

DO YOU HAVE ANY PAST DUE TAX RETURNS OR PAST DUE POST-PETITION TAX OBLIGATIONS?

IF YES, PLEASE PROVIDE A WRITTEN EXPLANATION INCLUDING WHEN SUCH RETURNS WILL BE FILED, OR WHEN SUCH PAYMENTS WILL BE MADE AND THE SOURCE OF THE FUNDS FOR THE PAYMENT.

*(Exhibit A)*

**INCOME**

PLEASE SEPARATELY LIST ALL OF THE INCOME YOU RECEIVED FOR THE MONTH. THE LIST SHOULD INCLUDE ALL INCOME FROM CASH AND CREDIT TRANSACTIONS. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

	<b>TOTAL INCOME</b>	\$ _____
<b>SUMMARY OF CASH ON HAND</b>		
Cash on Hand at Start of Month		\$ _____
Cash on Hand at End of Month		\$ _____
PLEASE PROVIDE THE TOTAL AMOUNT OF CASH CURRENTLY AVAILABLE TO YOU	<b>TOTAL</b>	\$ _____

*(Exhibit B)*

**EXPENSES**

PLEASE SEPARATELY LIST ALL EXPENSES PAID BY CASH OR BY CHECK FROM YOUR BANK ACCOUNTS THIS MONTH. INCLUDE THE DATE PAID, WHO WAS PAID THE MONEY, THE PURPOSE AND THE AMOUNT. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

**TOTAL EXPENSES** \_\_\_\_\_

*(Exhibit C)*

**CASH PROFIT**

INCOME FOR THE MONTH (TOTAL FROM EXHIBIT B)	
EXPENSES FOR THE MONTH (TOTAL FROM EXHIBIT C)	

(Subtract Line C from Line B)

CASH PROFIT FOR THE MONTH \_\_\_\_\_

**UNPAID BILLS**

PLEASE ATTACH A LIST OF ALL DEBTS (INCLUDING TAXES) WHICH YOU HAVE INCURRED SINCE THE DATE YOU FILED BANKRUPTCY BUT HAVE NOT PAID. THE LIST MUST INCLUDE THE DATE THE DEBT WAS INCURRED, WHO IS OWED THE MONEY, THE PURPOSE OF THE DEBT AND WHEN THE DEBT IS DUE. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

TOTAL PAYABLES \_\_\_\_\_

(Exhibit D)

**MONEY OWED TO YOU**

PLEASE ATTACH A LIST OF ALL AMOUNTS OWED TO YOU BY YOUR CUSTOMERS FOR WORK YOU HAVE DONE OR THE MERCHANDISE YOU HAVE SOLD. YOU SHOULD INCLUDE WHO OWES YOU MONEY, HOW MUCH IS OWED AND WHEN IS PAYMENT DUE. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

TOTAL RECEIVABLES \_\_\_\_\_

(Exhibit E)

**BANKING INFORMATION**

PLEASE ATTACH A COPY OF YOUR LATEST BANK STATEMENT FOR EVERY ACCOUNT YOU HAVE AS OF THE DATE OF THIS FINANCIAL REPORT OR HAD DURING THE PERIOD COVERED BY THIS REPORT.

(Exhibit F)

**EMPLOYEES**

NUMBER OF EMPLOYEES WHEN THE CASE WAS FILED?

NUMBER OF EMPLOYEES AS OF THE DATE OF THIS MONTHLY REPORT?

**PROFESSIONAL FEES**

*BANKRUPTCY RELATED:*

PROFESSIONAL FEES RELATING TO THE BANKRUPTCY CASE PAID DURING THIS REPORTING PERIOD?

TOTAL PROFESSIONAL FEES RELATING TO THE BANKRUPTCY CASE PAID SINCE THE FILING OF THE CASE?

*NON-BANKRUPTCY RELATED:*

PROFESSIONAL FEES PAID NOT RELATING TO THE BANKRUPTCY CASE PAID DURING THIS REPORTING PERIOD?

TOTAL PROFESSIONAL FEES PAID NOT RELATING TO THE BANKRUPTCY CASE PAID DURING THIS REPORTING PERIOD?

---

**PROJECTIONS**

---

COMPARE YOUR ACTUAL INCOME AND EXPENSES TO THE PROJECTIONS FOR THE FIRST 180 DAYS OF YOUR CASE PROVIDED AT THE INITIAL DEBTOR INTERVIEW

---

	<u>Projected</u>	<u>Actual</u>	<u>Difference</u>
INCOME			
EXPENSES			
CASH PROFIT			

TOTAL PROJECTED INCOME FOR THE NEXT MONTH:

TOTAL PROJECTED EXPENSES FOR THE NEXT MONTH:

TOTAL PROJECTED CASH PROFIT FOR THE NEXT MONTH:

**ADDITIONAL INFORMATION**

**PLEASE ATTACH ALL FINANCIAL REPORTS INCLUDING AN INCOME STATEMENT AND BALANCE SHEET WHICH YOU PREPARE INTERNALLY.**

COMMITTEE NOTE

This form is new. It implements § § 434 and 435 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), which provided for rules and an official form to assist small business debtors in chapter 11 cases to fulfill their responsibilities under § 308 of the Code, a provision added by the 2005 Act. The form directs the debtor to disclose the information required under § 308 and resembles those developed earlier by the United States trustees for use in supervising debtors in possession in chapter 11 cases.

United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_,

Case No. \_\_\_\_\_

Debtor

Chapter 11

**PERIODIC REPORT REGARDING VALUE, OPERATIONS AND PROFITABILITY OF ENTITIES IN WHICH THE ESTATE OF [NAME OF DEBTOR] HOLDS A SUBSTANTIAL OR CONTROLLING INTEREST**

This is the report as of \_\_\_\_\_ on the value, operations and profitability of those entities in which the estate holds a substantial or controlling interest, as required by Bankruptcy Rule 2015.3. The estate of [Name of Debtor] holds a substantial or controlling interest in the following entities:

Name of Entity	Interest of the Estate	Tab #

This periodic report (the "Periodic Report") contains separate reports ("Entity Reports") on the value, operations, and profitability of each entity listed above.

Each Entity Report shall consist of three exhibits. Exhibit A contains a valuation estimate for the entity as of a date not more than two years prior to the date of this report. It also contains a description of the valuation method used. Exhibit B contains a balance sheet, a statement of income (loss), a statement of cash flows, and a statement of changes in shareholders' or partners' equity (deficit) for the period covered by the Entity Report, along with summarized footnotes. Exhibit C contains a description of the entity's business operations.

**THIS REPORT MUST BE SIGNED BY A REPRESENTATIVE OF THE TRUSTEE OR DEBTOR IN POSSESSION.**

The undersigned, having reviewed the above listing of entities in which the estate of [Debtor] holds a substantial or controlling interest, and being familiar with the Debtor's financial affairs, verifies under the penalty of perjury that the listing is complete, accurate and truthful to the best of his/her knowledge.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Name of Authorized Individual

\_\_\_\_\_  
Title of Authorized Individual

[If the Debtor is an individual or in a joint case]

Signature(s) of Debtor(s) (Individual/Joint)

\_\_\_\_\_  
Signature of Debtor

\_\_\_\_\_  
Signature of Joint Debtor



**Exhibit A**  
**Valuation Estimate for [Name of Entity]**

[Provide a statement of the entity's value and the value of the estate's interest in the entity, including a description of the basis for the valuation, the date of the valuation and the valuation method used. This valuation must be no more than two years old. Indicate the source of this information.]

**Exhibit B**  
**Financial Statements for [Insert Name of Entity]**

**Exhibit B-1**  
**Balance Sheet for [Name of Entity]**  
As of [date]

[Provide a balance sheet dated as of the end of the most recent six-month period of the current fiscal year and as of the end of the preceding fiscal year. Indicate the source of this information.]

**Exhibit B-2**  
**Statement of Income (Loss) for [Name of Entity]**  
Period ending [date]

[Provide a statement of income (loss) for the following periods:

- (i) For the initial report:
  - a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
  - b. the prior fiscal year.
- (ii) For subsequent reports, since the closing date of the last report.

Indicate the source of this information.]

**Exhibit B-3**  
**Statement of Cash Flows for [Name of Entity]**  
For the period ending [date]

[Provide a statement of changes in cash flows for the following periods:

- (i) For the initial report:
  - a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
  - b. the prior fiscal year.
- (ii) For subsequent reports, since the closing date of the last report.

Indicate the source of this information.]

**Exhibit B-4**  
**Statement of Changes in Shareholders'/Partners' Equity (Deficit) for [Name of Entity]**  
period ending [date]

[Provide a statement of changes in shareholders'/partners equity (deficit) for the following periods:

- (i) For the initial report:
  - a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
  - b. the prior fiscal year.
- (ii) For subsequent reports, since the closing date of the last report.

Indicate the source of this information.]

**Exhibit C**  
**Description of Operations for [name of entity]**

[Describe the nature and extent of the estate's interest in the entity.

Describe the business conducted and intended to be conducted by the entity, focusing on the entity's dominant business segment(s). Indicate the source of this information.]

**Instructions for Periodic Report Concerning Related Entities**

**General Instructions**

1. This form periodic report (“Periodic Report”) on value, profitability, and operations of entities in which the estate holds a substantial or controlling interest (the “Form”) implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 19-8, 119 Stat. 23 (April 20, 2005)(“BAPCPA”). This Form should be used when required by Fed. R. Bankr. P. 2015.3, with such variations as may be approved by the court pursuant to subdivisions (d) and (e) of that rule.
2. In a chapter 11 case, the trustee or debtor in possession shall file Periodic Reports of the value, operations, and profitability of each entity that is not also a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. The reports shall be prepared as prescribed by this Form, and shall be based upon the most recent information reasonably available to the trustee or debtor in possession.
3. Rule 2015.3 provides that, where the estate controls or owns at least a 20 percent interest of an entity, the estate’s interest is presumed to be substantial or controlling. Where the estate controls or owns less than a 20 percent interest, the rule presumes that the estate’s interest is not substantial or controlling. The question of substantial or controlling interest is, however, a factual one to be decided in each case.
4. The first Periodic Report required by subdivision (a) of Rule 2015.3 shall be filed no later than five days before the first date set for the meeting of creditors under § 341 of the Code. Subsequent Periodic Reports shall be filed no less frequently than every six months thereafter, until a plan of reorganization becomes effective or the case is closed, dismissed, or converted. Copies of the Periodic Report shall be served on the U.S. Trustee, any committee appointed under § 1102 of the Code, and any other party in interest that has filed a request therefor.
5. The source of the information contained in each Periodic Report shall be indicated.

**Specific Instructions**

6. Each entity subject to the reporting requirement of Rule 2015.3 shall be listed in the table contained on the first page of the form. Reports for each such entity shall be placed behind separate tabs, and each such report shall consist of three exhibits. Exhibit A shall provide valuation information; Exhibit B shall provide financial statements; and Exhibit C shall provide a description of operations.



Instructions for Exhibit A – Valuation

7. Provide a statement of the entity's value and the value of the estate's interest in the entity, including a description of the basis for the valuation, the date of the valuation, the valuation method used and the source or preparer of the information. This valuation must be no more than two years old.

Instructions for Exhibit B – Financial Statements and Profitability

8. The financial statements may be unaudited. The financial statements should be prepared in accordance with generally accepted accounting principles in the United States ("USGAAP"); deviations, if any from USGAAP, shall be disclosed. Indicate the source or preparer of the information.
9. Exhibit B shall include the following financial statements, and shall indicate the source of the information presented:
  - (a) A balance sheet dated as of the end of the most recent six-month period of the current fiscal year and as of the end of the preceding fiscal year.
  - (b) A statement of income (loss) for the following periods:
    - (i) For the initial report:
      - a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
      - b. the prior fiscal year.
    - (ii) For subsequent reports, since the closing date of the last report.
  - (c) A statement of changes in cash flows for the following periods:
    - (i) For the initial report:
      - a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
      - b. the prior fiscal year.
    - (ii) For subsequent reports, since the closing date of the last report.
  - (d) A statement of changes in shareholders'/partners' equity (deficit) for the following periods:
    - (i) For the initial report:
      - a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
      - b. the prior fiscal year.
    - (ii) For subsequent reports, since the closing date of the last report.
10. The balance sheet contained in Exhibit B-1 may include only major captions with the exception of inventories. Data as to raw materials, work in process, and finished goods inventories should be included either on the face of the balance sheet or in the notes to

the financial statements, if applicable. Where any major balance sheet caption is less than 10% of total assets, the caption may be combined with others. An illustrative example of such a balance sheet is set forth below:

XYZ Company  
Balance Sheet  
As of \_\_\_\_\_

<u>Assets</u>	<u>Year to date</u>	<u>Prior Fiscal Year</u>
Cash and cash items	_____	_____
Marketable securities	_____	_____
Accounts and notes receivable (non-affiliates), net of allowances	_____	_____
Accounts due from affiliates	_____	_____
Inventories		
Raw materials	_____	_____
Work in Process	_____	_____
Finished goods	_____	_____
Long-term contract costs	_____	_____
Supplies	_____	_____
LIFO reserve	_____	_____
Total inventories	_____	_____
Prepaid expenses	_____	_____
Other current assets	_____	_____
Total current assets	_____	_____
Securities of affiliates	_____	_____
Indebtedness of affiliates (non-current)	_____	_____
Other investments	_____	_____
Property, plant and equipment, net of accumulated depreciation and amortization	_____	_____
Intangible assets	_____	_____
Other assets	_____	_____
Total Assets	_____	_____
<u>Liabilities and Shareholders'/Partners' Equity</u>		
	<u>Year to date</u>	<u>Prior Fiscal Year</u>
Accounts and notes payable (non-affiliates)	_____	_____
Payables to affiliates	_____	_____
Other current liabilities	_____	_____
Total current liabilities	_____	_____

Bonds, mortgages, and other long-term debt, including capitalized leases	_____	_____
Indebtedness to affiliates (non-current)	_____	_____
Other liabilities	_____	_____
Commitments and contingencies	_____	_____
Deferred credits	_____	_____
Minority interests in consolidated subsidiaries	_____	_____
Preferred stock subject to mandatory redemption or whose redemption is outside the control of the issuer	_____	_____
Total liabilities	_____	_____
Shareholders' equity	_____	_____
Total liabilities and shareholders'/partners' equity	_____	_____

11. The statement of income (loss) contained in Exhibit B-2 should also include major captions. When any major statement of income (loss) caption is less than 15% of net income (loss) for the most recent fiscal year, the caption may be combined with others. Notwithstanding these tests, *de minimis* amounts need not be shown separately. An illustrative example of such a statement of income (loss) is set forth below:

XYZ Company  
Statement of income (loss)  
For the periods ending \_\_\_\_\_

	<u>Year to date</u>	<u>Prior Fiscal Year</u>
Net sales and gross revenues	_____	_____
Costs and expenses applicable to sales and revenues	_____	_____
Gross profit	_____	_____
Selling, general, and administrative expenses	_____	_____
Provision for doubtful accounts	_____	_____
Other general expenses	_____	_____
Operating income (loss)	_____	_____
Non-operating income (loss)	_____	_____
Interest and amortization of debt discount	_____	_____
Non-operating expenses	_____	_____
Income or loss before income tax expense	_____	_____
Income tax expense	_____	_____
Minority interest in income of consolidated subsidiaries	_____	_____
Equity in earnings of unconsolidated subsidiaries	_____	_____

and 50 per cent or less owned persons	_____	_____
Income or loss from continuing operations	_____	_____
Discontinued operations	_____	_____
Income or loss before extraordinary items and cumulative effects of changes in accounting principles	_____	_____
Extraordinary items, net of tax	_____	_____
Cumulative effects of changes in accounting principles	_____	_____
Net income (loss)	_____	_____
Earnings per share data	_____	_____

12. The statement of cash flows in Exhibit B-3 may be abbreviated, starting with a single figure of funds provided by operations and showing other changes individually only when they exceed 10% of the average of funds provided by operations for the most recent fiscal year. Notwithstanding this test, *de minimis* amounts need not be shown separately. An illustrative example of such a statement of cash flows is set forth below:

XYZ Company  
Statement of cash flows  
For the periods ending \_\_\_\_\_

	Year to date	Prior Fiscal Year
Net cash provided (used) by operating activities	_____	_____
Cash flows from investing activities		
Capital expenditures	_____	_____
Sale of _____	_____	_____
Other (describe) _____	_____	_____
Net cash provided (used) in investing activities	_____	_____
Cash flows provided (used) by financing activities		
Net borrowings under line-of-credit	_____	_____
Principal payments under capital leases	_____	_____
Proceeds from issuance of long-term debt	_____	_____
Proceeds from sale of stock	_____	_____
Dividends paid/Partner Distributions	_____	_____
Net cash provided (used) in financing activities	_____	_____
Net increase (decrease) in cash and cash equivalents	_____	_____
Cash and cash equivalents		

Beginning of period		
End of period		

13. Subject to paragraph 11 above, an illustrative example of such a statement of changes in shareholders’/partners’ equity in Exhibit B-4 is set forth below:

XYZ Company  
Statement of changes in shareholders’/partners’ equity (deficit)  
For the periods ending

	Year to date	Prior Fiscal Year
Balance, beginning of period		
Comprehensive net income		
Net income		
Other comprehensive income, net of tax		
Unrealized gains (losses) on securities		
Foreign translation adjustments		
Minimum pension liability adjustment		
Issuance of stock		
Dividends paid		
Balance, end of period		

14. The financial information in the financial statements shall include disclosures either on the face of the statements or in accompanying footnotes sufficient to make the information not misleading. Disclosures should encompass, but not be limited to, for example, accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization including significant borrowings or modification of existing financing arrangements; and the reporting entity resulting from business combinations or dispositions. Where material contingencies exist, disclosure of such matters shall be provided.

15. If appropriate, the statement of income (loss) should show earnings (loss) per share and dividends declared per share applicable to common stock. The basis of the earnings per share computation should be stated together with the number of shares used in the computation.

16. In addition to the financial statements required above, entities in the development stage should provide the cumulative financial statements (condensed to the same degree as allowed above) and disclosures required by Statement of Financial Accounting Standards No. 7, “Accounting and Reporting by Development Stage Enterprises,” to the date of the latest balance sheet presented.

#### Instructions for Exhibit C – Description of Operations

17. The description of operations contained in Exhibit C of this Form should describe the nature and extent of the estate’s interest in the entity, as well as the business conducted by and intended to be conducted by the entity, focusing on the entity’s dominant business segment(s) including, but not limited to the following as applicable:
  - Principal product produced or services rendered and methods of distribution
  - Description of the status of a new product or segment if a public announcement has been made or information publicly disseminated
  - Sources and availability of raw materials
  - Any significant patents, trademarks, licenses, franchises, and concessions held
  - Seasonality of the business
  - Dependence upon a single customer or a few customers
  - Dollar amount of backlog orders believed to be firm
  - Exposure to renegotiation or redetermination or termination of significant contracts
  - Competitive conditions facing the entity
  - Description of properties owned
  - Significant legal proceedings
  - Material purchase commitments
  - Identified trends events or uncertainties that are likely to have a material impact on the entity’s short-term liquidity, net sales, or income from continuing operations
18. The source preparer of the information should be indicated.

COMMITTEE NOTE

This form is new. It implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), which requires a chapter 11 debtor to file periodic reports on the profitability of any entities in which the estate holds a substantial or controlling interest. The form is to be used when required by Bankruptcy Rule 2015.3, with such variations as may be approved by the court pursuant to subdivisions (d) and (e) of that rule. The form includes instructions and examples of the types of information needed to complete it.

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

**Agenda E-19 (Appendix B)**  
**Rules**  
**September 2007**

DAVID F. LEVI  
CHAIR

PETER G. McCABE  
SECRETARY

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**To: Hon. David F. Levi, Chair**  
**Standing Committee on Rules of Practice and Procedure**

**From: Hon. Susan C. Bucklew, Chair**  
**Advisory Committee on Federal Rules of Criminal Procedure**

**Subject: Report of the Advisory Committee on Criminal Rules**

**Date: May 19, 2007 (revised July 2007)**

**I. Introduction**

The Advisory Committee on Federal Rules of Criminal Procedure (“the Committee”) met on April 16-17, 2007, in Brooklyn, N.Y. and took action on a number of proposed amendments to the Rules of Criminal Procedure.

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This report addresses a number of action items:

(1) approval of published Rules 1, 12.1, 17, 18, 32, 41(b)(5), 60, and 61 for transmission to the Judicial Conference;

\* \* \* \* \*

**II. Action Items—Recommendations to Forward Amendments to the Judicial Conference**

The first seven amendments discussed below implement the Crime Victims’ Rights Act (CVRA), codified as 18 U.S.C. § 3771. As explained when these rules were proposed for publication, they reflect two basic decisions. The first decision concerns the scope of the proposals. The CVRA reflects a careful Congressional balance between the constitutional rights of defendants, the discretion afforded the prosecution, and the new rights afforded to victims. Given that careful balance, the Committee generally sought to implement, but not go beyond, the rights created by the statute. For the same reason, the Committee adopted the statutory language whenever possible. The second decision concerns the structure of the proposed amendments. The Committee believed it would be easier for victims and their advocates (as well as judges, prosecutors and defense counsel)



to identify the new provisions regarding victims if they were placed in a single rule. Therefore where possible the Committee placed many of the new provisions in a single rule (new Rule 60) rather than scattering them throughout the rules.

The proposed amendments generated a large number of written comments (as well as testimony at the public hearing) including both criticism that the proposed rules went too far, tipping the adversarial balance and depriving the defense of critical rights, and criticism that the proposed rules did not go far enough to implement the specific provisions of the CVRA and the fundamental policies that it reflects. Of particular note were letters from Senator Kyl, one of the sponsors of the CVRA, and Representatives Poe and Costa, co-chairs of the Congressional Victims' Rights Caucus. In addition to concerns focusing on specific amendments, some comments urged that the Committee begin the drafting process anew, rather than moving forward with the proposed amendments.

The Committee devoted a great deal of time, attention, and thought to the public comments, hearing testimony, and the important issues raised therein. After the public comment period closed, a subcommittee met several times by teleconference and exchanged many preliminary memoranda and e-mails. Its work was incorporated into a detailed report to the full Advisory Committee, which then discussed the CVRA rules for more than five hours at its April meeting.

After careful consideration, the Advisory Committee recommends that the full slate of proposed rules, as modified in response to the public comments, be approved and forwarded to the Judicial Conference. These proposals implement core requirements of the CVRA. The Committee favors proceeding on a step-by-step basis, beginning generally with amendments that implement the clear requirements imposed by the statute, leaving many other issues that are less clear for additional development by judicial decisions that will provide concrete examples of the factual situations in which the issues arise and give us the benefit of thoughtful treatment by the judges who confront these issues.

The Committee recognized that further amendments may also be desirable, but concluded that need not and should not delay the adoption of the proposed amendments. The Committee will treat the question of victims' rights as a continuing agenda item, allowing for consideration of amendments to other rules (or revisions, as needed in light of experience, to the rules that would be amended by our proposal). Several additional amendments have been suggested by Senator Kyl, Representatives Poe and Costa, Judge Paul Cassell, and the Federal Public and Community Defenders, among others. Additional proposals may come to the Committee's attention as a result of developments in judicial decisions.

It is important to note that proceeding in this fashion will expedite the implementation of core requirements of the CVRA, and will not prevent the immediate implementation of any other provisions of the Act. The courts are already bound to follow the statute. But where the statute's

dictates are not clear, or its directives may be accommodated in more than one way, the Committee felt it best to allow some judicial development of the issues which will guide the rulemaking process. (The same course of action is being followed, for example, with the forfeiture rules that will be discussed later in this report.)

**1. ACTION ITEM—Rule 1. Scope; Definitions; Proposed Amendment Defining “Victim.”**

This amendment incorporates by reference the definition of the term “crime victim” found in the Crime Victims’ Rights Act (CVRA), codified as 18 U.S.C. § 3771(e). The statutory definition provides that a victim is “a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.” The Committee revised the text of Rule 1(b)(11) in response to public comments by transferring portions of the subdivision relating to who may assert the rights of a victim to Rule 60(b)(2). The Committee Note was revised to reflect that change and to indicate that the court has the power to decide any dispute as to who is a victim. The Committee concluded that it was not necessary at this point to create detailed procedures for this determination, though something of this nature could be added in the future if experience indicates it would be desirable.

The Committee considered but did not adopt two other suggested changes. Although some comments suggested that the definition should be expressly limited to the specific rules adopted to implement the CVRA, these concerns seemed misplaced. The definitions in Rule 1 are applicable only to the Criminal Rules themselves<sup>1</sup>; they do not govern, for example, rights to obtain restitution, to bring civil actions, and so forth. Accordingly, the Committee declined to add a listing of the rules to which the definition would be applicable. The Committee also declined to add additional language limiting the definition to a person injured by a crime that is the subject of a pending prosecution. The only instances in which the present and proposed Criminal Rules provide rights to victims — Rules 12.1, 12.4, 17, 18, 32, 38, and 60 — are those in which a prosecution is pending. Moreover, proposed Rule 60(b)(4) requires the rights provided therein to be asserted in the district in which the defendant is being prosecuted.

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<sup>1</sup> In addition to the proposed rules, the new definition would apply to current Rules 12.4 and 38, which use the term “victim” or “victims.” The adoption of the general definition does not appear to pose a problem for the interpretation or application of either provision. Rule 12.4(a)(2) requires the government to file a statement identifying an organizational victim. Rule 38(e) authorizes a court to stay a sentence providing for notice to victims under 18 U.S.C. § 3555. Section 3555 gives the court discretion to require that the defendant give victims notice and an explanation of his conviction of fraud or other intentionally deceptive practices.

With the modifications noted above, the Committee voted 10 to 1 in favor of recommending approval of the amendment to Rule 1.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 1 be approved and forwarded to the Judicial Conference.***

**2. ACTION ITEM—Rule 12.1. Notice of Alibi Defense; Proposed Amendment Regarding Victim’s Address and Telephone Number.**

This amendment implements the victim’s right under the Crime Victims’ Rights Act to be reasonably protected from the accused, and to be treated with respect for the victim’s dignity and privacy. See 18 U.S.C. § 3771(a)(1) & (8). The amended rule provides that a victim’s address and telephone number should not automatically be provided to the defense when an alibi defense is raised. If a defendant establishes a need for this information, the court has discretion either to order its disclosure to the defense or to fashion an alternative procedure that provides the defendant with the information necessary to prepare a defense but also protects the victim’s interests.

At the suggestion of the Standing Committee, we requested public comment on the question whether the rule should assume that a defendant must demonstrate need to get the name and contact information for a victim who will testify to rebut his alibi defense, or should instead require a case-by-case showing of the need to withhold this information. Several comments urged that the published rule struck the wrong balance, and that the proposed amendment to Rule 12.1 tips the adversarial balance too far as a policy or constitutional matter by requiring a showing of need. Critics argue that this violates the fundamental requirement that discovery be reciprocal, which is a condition of requiring the defendant to produce information about his defense in advance of trial; the defendant must provide the names and contact information for his alibi witnesses, but he may be denied the same information about victims who will be called as alibi witnesses. Many other comments argued that the proposed rule does not go far enough. These comments argued the amendment gives too little weight to victim interests in providing — upon a showing of need — for either disclosure of the name and contact information to the defense or providing some other reasonable procedure to allow the preparation of the defense as well as the protection of the victim’s interests.

The Committee considered these concerns at length before approving the rule by a 9 to 2 vote. It concluded that the rule, as published, strikes an appropriate balance and does not violate the requirement that discovery be reciprocal. The rule triggers a judicial determination in any case where the defendant meets the low threshold standard of showing a “need” for the name and contact information of a victim who will testify to rebut his alibi. Generally the defense will be able to meet this standard, though there will be occasional cases in which the defense is already aware of the

name and contact information of a victim who will be called to rebut his alibi. Once there has been a showing of “need,” the rule requires the court either to provide this information to the defense or to fashion some other reasonable procedure that allows the preparation of the defense while protecting the victim’s interest. The rule fairly puts the burden, in the first instance, on the defendant to bring the issue before the court. In a normal case, the victim is not likely to be in a position to raise a timely objection or establish a basis for non-disclosure, and the government may not be privy to all of the relevant facts. If the defendant establishes a need for this information, the amendment gives the government or the victim time to weigh in before disclosure can occur. The “need” threshold is an appropriate basis to trigger the court’s consideration of all aspects of the need and risk analysis. Finally, the proposed amendment does provide ample authority to protect the victim. In the exceptional case in which the authority to fashion an alternative to disclosure is not sufficient for this purpose, the court has the authority under Rule 12.1(d) for good cause to grant relief from any of the requirements in the Rule 12.1.

The Committee voted 9 to 2 to forward proposed Rule 12.1 to the Standing Committee.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 12.1 be approved as published and forwarded to the Judicial Conference.***

**3. ACTION ITEM—Rule 17. Subpoena; Proposed Amendment Regarding Personal or Confidential Information About Victim.**

This amendment implements the provision in the Crime Victims’ Rights Act, codified at 18 U.S.C. § 3771(a)(8), which states that victims have a right to respect for their “dignity and privacy.” The rule provides a protective mechanism when the defense subpoenas a third party to provide personal or confidential information about a victim. Third party subpoenas raise special concerns because a third party may not assert the victim’s interests, and the victim may be unaware of the existence of the subpoena. Accordingly, the amendment requires judicial approval before service of a subpoena seeking personal or confidential information about a victim from a third party. The amendment also provides a mechanism for notifying the victim, and makes it clear that a victim may move to quash or modify the subpoena under Rule 17(c)(2) on the grounds that it is unreasonable or oppressive. Following publication the text was also modified to make it clear that a victim could also object by other means, such as a letter to the court.

The amendment seeks to protect the privacy and dignity interests of victims without unfair prejudice to the defense. During the comment period it drew criticism from both advocates of victims, who argued that it did not go far enough, and persons concerned that it unduly restricted defense access to critical information during preparation for trial. More general concerns were also expressed about ex parte judicial action.

At present, all subpoenas are issued by the court in blank at the request of a party under Rule 17(c), and served without notice to opposing counsel. As published, the amendment authorized the court to approve the issuance of the subpoenas ex parte, and made notice to the victim discretionary. This portion of the amendment was revised to omit the reference authorizing ex parte action, and to provide that the court must, absent exceptional circumstances, give notice to the victim prior to approving such a subpoena. The Committee approved this language after an extended discussion that included consideration of substituting the “good cause shown” standard (which was rejected by a vote of 8 to 4). The Committee also added language to the note leaving to the judgment of the district court the determination whether to permit the matter to be decided ex parte without notice to anyone in a particular case. This clarifies the point that in exceptional cases the subpoena can be served without notice to either the government or the victim. The note references as examples of such exceptional circumstances situations where evidence might be lost or destroyed without immediate action, or where providing notice would unfairly prejudice the defense by premature disclosure of sensitive defense strategy.

The amendment applies only to subpoenas served after a complaint, indictment, or information has been filed. It has no application to grand jury subpoenas. When the grand jury seeks the production of personal or confidential information, grand jury secrecy affords substantial protection for the victim’s privacy and dignity interests.

After extended discussion the Committee voted 9 to 3 in favor of recommending the approval of the proposed amendment to Rule 17.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 17 be approved and forwarded to the Judicial Conference.***

**4. ACTION ITEM—Rule 18. Place of Trial Within District; Proposed Amendment Requiring Court to Consider Convenience of Victims.**

This amendment requires the court to consider the convenience of victims – as well as the convenience of the defendant and witnesses – in setting the place for trial within the district. It is intended to implement the victim’s “right to be treated with fairness” under the Crime Victims’ Rights Act, codified at 18 U.S.C. § 3771(a)(8). Because the interests of victims who will testify are already considered when setting the place for trial within a district, the amendment’s focus is on victims who will not testify. In response to public comments, the Committee revised the note to delete some language that might be misconstrued and to state that the court has substantial discretion to balance any competing interests.

The Committee voted 9 to 2 in favor of recommending approval of the proposed rule.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 18 be approved and forwarded to the Judicial Conference.***

**5. ACTION ITEM—Rule 32. Sentencing and Judgment; Proposed Amendment Deleting Definition of Victim, Amending Scope of Presentence Investigation and Report, and Providing for Victim’s Opportunity to Be Heard at Sentencing.**

Several amendments to Rule 32 are proposed to implement various aspects of the Crime Victims’ Rights Act.

First, Rule 32(a) is amended by deleting the definitions of “victim” and “[c]rime of violence or sexual abuse.” These provisions have been superseded by the CVRA. As noted above, a companion amendment to Rule 1 incorporates the CVRA’s broader definition of victim. The amendment would delete all of the text in Rule 32(a). The Committee proposes reserving Rule 32(a), rather than renumbering all of the subdivisions of this complex rule.

Second, the Committee proposes amending Rule 32(c)(1) to make it clear that the presentence investigation should include information pertinent to restitution whenever the law permits the court to order restitution, not merely when it requires restitution. This amendment implements the victim’s statutory right under the Crime Victims’ Rights Act to “full and timely restitution as provided in law.” See 18 U.S.C. § 3771(a)(6).

Third, Rule 32(d)(2)(B) is amended to make it clear that victim impact information should be treated in the same way as other information contained in the presentence report. The amendment deletes language requiring victim impact information to be “verified” and “stated in a nonargumentative style” because that language does not appear in the other subparagraphs of Rule 32(d)(2).

Fourth, amended Rule 32(i)(4)(B) deletes language which refers only to victims of crimes of violence or sexual abuse. As noted above, these provisions have been superseded by the CVRA.

Fifth, subdivision (i)(4)(B) has been amended to incorporate the statutory language of the CVRA, which provides that victims have the right “to be reasonably heard” in judicial proceedings regarding sentencing. See 18 U.S.C. § 3771(a)(4). This proposed change prompted the greatest number of public comments. One concern that was expressed repeatedly was that the statutory language might be interpreted to cut back on the victim’s right to be heard at sentencing because the

statutory phrase replaced language giving victims of crimes of violence or sexual offenses the right “to speak.” The Committee added language to the note stating that absent unusual circumstances any victim who is in the courtroom should be allowed a reasonable opportunity to speak directly to the judge. Other comments requested changes falling outside the bounds of the published amendments, such as adding a requirement that victims be given the right to disclosure to all or part of the presentence report. A change of this nature would require publication for notice and comment, and thus could not be considered as part of this amendment.

After extended discussion and votes on preliminary matters, the Committee voted 10 to 2 to forward the proposed Rule 32 amendments to the Standing Committee.

***Recommendation—The Advisory Committee recommends that the proposed amendments to Rule 32 be approved and forwarded to the Judicial Conference.***

**6. ACTION ITEM—Rule 60. Victim’s Rights. Proposed New Rule Providing for Notice to Victims, Attendance at Proceedings, the Victim’s Right to Be Heard; Enforcement of Victim’s Rights; and Limitations on Relief.**

This rule implements several provisions of the Crime Victims’ Rights Act, codified as 18 U.S.C. § 3771, in judicial proceedings in the federal courts. It contains provisions regarding the notice to victims regarding judicial proceedings, the victim’s attendance at these proceedings, and the victim’s right to be heard, as well as provisions governing the enforcement of victims’ rights, including who may assert these rights and where they may be asserted. The Rule also incorporates the statutory provisions limiting relief. Following publication, the Rule was amended throughout to use consistent language to describe its application to the rights of victims “described in these rules.” That change responds to concerns that the Rule might be thought to apply to other contexts where victim interests are considered, where there are distinct bodies of statutory or decisional law.

Rule 60, like other CVRA amendments, was criticized both for going too far and not going far enough. A number of commentators proposed additions which were not considered on the merits because they would require publication for comment. These include the following: (1) a provision governing the time when victim rights must be raised, (2) a provision requiring victims to assert their rights under the same procedural rules applicable to the parties, (3) a provision applying waiver to victim rights not asserted in a timely manner, (4) a provision requiring victims to be notified of their rights at proceedings, and (5) a provision giving the victims the right to be heard at any proceeding affecting their rights, not just at bail, plea, and sentencing hearings. Other comments suggested that some or all of the provisions in Rule 60 were unnecessary because they were already provided for by statute, or were beyond the scope of the Enabling Act. Finally, there was support for adding a



provision that would indicate that the victim's rights under the Criminal Rules do not override the constitutional rights of the defendant or third parties, and do not override statutory rights in the absence of a showing of compelling need. These proposals, and others, can be considered by the Committee in the future. Finally, support was also expressed for unpacking Rule 60 and distributing its changes throughout the rules. As noted above, the Advisory Committee has reaffirmed its view that it is desirable to group these key provisions in a single rule.

Subdivision (a)(1) implements 18 U.S.C. § 3771(a)(2), which provides that a victim has a "right to reasonable, accurate, and timely notice of any public court proceeding. . . ." The proposed amendment requires "the government" to use its best efforts to notify victims of public court proceedings.

Subdivision (a)(2) implements 18 U.S.C. § 3771(a)(3), which provides that the victim shall not be excluded from public court proceedings unless the court finds by clear and convincing evidence that the victim's testimony would be materially altered by attending and hearing other testimony at the proceeding. It closely tracks the statutory language.

Subdivision (a)(3) implements 18 U.S.C. § 3771(a)(4), which provides that a victim has the "right to be reasonably heard at any public proceeding in the district court involving release, plea, [or] sentencing . . . ." It tracks the statutory language.

Subdivision (b) implements the provisions of 18 U.S.C. § 3771(d)(1), (2), (3), and (5). It provides that the victim and the attorney for the government may assert the rights provided for under the Crime Victims' Rights Act, and that those rights are to be asserted in the district where the defendant is being prosecuted. Where there are too many victims to accord each the rights provided by the statute, the district court is given the authority to fashion a reasonable procedure to give effect to the rights without unduly complicating or prolonging the proceedings.

In response to public comments, proposed Rule 60 was amended to state that the "victim's legal representative" may raise the victim's rights, as specified by the CVRA. The note has been revised to state the Committee's understanding that counsel may present the views of the victim or the victim's lawful representative. The rule was also revised to state that a victim's rights can be raised by "any other person as authorized by 18 U.S.C. § 3771(d) and (e)." This incorporates the statutory provisions regarding victims who are minors and other victims who are incompetent, incapacitated or deceased, and it also recognizes the statutory limitations on a defendant's assertion of rights as a victim, which are found in 18 U.S.C. § 3771(d)(1) and (e).

Finally, the statute and the implementing rule make it clear that failure to provide relief under the rule never provides a basis for a new trial. Failure to afford the rights provided by the statute and implementing rules may provide a basis for re-opening a plea or a sentence, but only if the victim



can establish all of the following: the victim asserted the right before or during the proceeding, the right was denied, the victim petitioned for mandamus within 10 days as provided by 18 U.S.C. § 3771 (d)(3), and – in the case of a plea – the defendant did not plead guilty to the highest offense charged. (The term “highest offense charged” was drawn from the CVRA, 18 U.S.C. § 3771 (d)(5)(C).)

The Committee voted 10 to 2 in favor of recommending that proposed Rule 60 be approved.

*Recommendation–The Advisory Committee recommends that proposed Rule 60 be approved and forwarded to the Judicial Conference.*

**7. ACTION ITEM–Rule 61. Title; Proposed New Rule.**

This amendment renumbers current Rule 60 as Rule 61 to accommodate the new victims’ rights rule. The Committee approved the amendment without objection.

*Recommendation–The Advisory Committee recommends that the proposal to renumber Rule 60 as Rule 61 be approved and forwarded to the Judicial Conference.*

**8. ACTION ITEM–Rule 41, Search and Seizure; Proposed Amendment Authorizing Magistrate Judge to Issue Warrants for Property Outside of the United States.**

This amendment responds to a problem that affects the investigation of cases involving corruption in United States embassies and consulates around the world. Often the most important evidence is located in the offices or residences associated with the consulate or embassy. Problems of this nature have arisen in cases involving embassies and consulates in many countries, and similar difficulties have arisen in American Samoa, a United States territory that is administered by the Department of the Interior but has no federal district court. Although these locations are all within U.S. control, they are not in any State or U.S. judicial district. As currently written, Rule 41(b) does not provide magistrate judges with the authority to issue warrants for such locations. (Although the USA PATRIOT Act amended Rule 41(b)(3) to provide magistrate judges with the authority to issue warrants outside the magistrate judge’s district, this authority is applicable only in cases involving certain terrorism offenses.)

The language of the proposed amendment was based upon Rule 41(b)(3), added by the USA PATRIOT Act, and upon the definition of the special maritime and territorial jurisdiction of the United States contained in 18 U.S.C. § 7, which includes U.S. consulates and embassies. The

proposed amendment provides for jurisdiction in any district in which activities related to the crime under investigation may have occurred, or in the District of Columbia, which is the default jurisdiction for venue under 18 U.S.C. § 3238.

A similar but broader amendment was approved in 1990 by the United States Judicial Conference, which recommended that the Supreme Court adopt the new rule. The Supreme Court declined to adopt the rule at that time, concluding that the matter required “further consideration.” The 1990 proposal was broadly worded: it applied to property “lawfully subject to search and seizure by the United States.” The current proposal, in contrast, is limited to property within any of the following: (1) a territory, possession, or commonwealth of the United States; (2) the premises of a United States diplomatic or consular mission in a foreign state, and related buildings and land; and (3) the residences and related property owned or leased by the United States and used by United States personnel assigned to United States diplomatic or consular missions in foreign states. These are all locations in which the United States has a legally cognizable interest or in which it exerts lawful authority and control. The amendment was intentionally drafted narrowly to avoid any thorny international issues. It addresses only search warrants, not arrest warrants, since the latter may raise issues under extradition treaties.

The published draft incorporated the language of 18 U.S.C. § 7(9), the statutory provision granting jurisdiction over crimes committed in diplomatic and consular missions, as well as the residences and related property owned or leased by the United States for United States personnel assigned to diplomatic or consular missions. At the urging of the Committee’s Style Consultant, the statutory language was simplified. The committee note was also amended to include a statement that the Rule is intended to authorize a magistrate judge to issue a warrant in all locations where the statute provides for jurisdiction, and that the differences in language reflect only differing style conventions.

At the request of the Standing Committee a reference to American Samoa was added to the rule and placed in brackets, and public comment was sought on whether American Samoa presented a special case. The Pacific Islands Committee of the Judicial Council of the Ninth Circuit opposed the application of the rule to American Samoa, suggesting that the matter requires further study, and that a different amendment that would treat the High Court of Samoa as the equivalent of a state court would be preferable to the current proposal.

The Advisory Committee concluded that the rule should apply to American Samoa. A gap in the Government's ability to enforce the law is plainly present in American Samoa, and that gap should be remedied. The Department is presently conducting investigations involving possible federal criminal activity in American Samoa, and the Federal Bureau of Investigation has established a Resident Agency there to address criminal activity. Because American Samoa is not located within any federal judicial district, violations of Title 18 that occur in American Samoa must be prosecuted

in districts outside of American Samoa, consistent with the venue provisions of 18 U.S.C. § 3238. The proposed amendment of Rule 41(b) would simply provide United States magistrate judges located in those other federal districts with the authority to issue search warrants to gather evidence that pertains to those federal criminal violations. The suggestion of the Pacific Islands Committee for a different amendment to Rule 41 addresses distinct issues of comity that are beyond the focus of the current proposal; this suggestion should not delay the implementation of the current proposal.

The Committee unanimously approved the proposed amendment for transmittal to the Standing Committee.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 41(b) be approved and forwarded to the Judicial Conference.***

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**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF CRIMINAL PROCEDURE\***

**Rule 1. Scope; Definitions**

\* \* \* \* \*

1       **(b) Definitions.** The following definitions apply to these  
2       rules:

\* \* \* \* \*

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4       **(11) "Victim" means a "crime victim" as defined in 18**  
5       U.S.C. § 3771(e).

\* \* \* \* \*

**Committee Note**

**Subdivision (b)(11).** This amendment incorporates the definition of the term "crime victim" found in the Crime Victims' Rights Act, codified at 18 U.S.C. § 3771(e). It provides that "the term 'crime victim' means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia."

Upon occasion, disputes may arise over the question whether a particular person is a victim. Although the rule makes no special provision for such cases, the courts have the authority to do any necessary fact finding and make any necessary legal rulings.

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\*New material is underlined; matter to be omitted is lined through.

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**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

The Committee revised the text of Rule 1(b)(11) in response to public comments by transferring portions of the subdivision relating to who may assert the rights of a victim to Rule 60(b)(2). The Committee Note was revised to reflect that change and to indicate that the Court has the power to decide any dispute as to who is a victim.

**Rule 12.1. Notice of an Alibi Defense**

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**(b) Disclosing Government Witnesses.**

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**(1) *Disclosure.***

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**(A) *In General.*** If the defendant serves a Rule

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12.1(a)(2) notice, an attorney for the

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government must disclose in writing to the

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defendant or the defendant's attorney:

8

**(i)** ~~(A) the name, address, and telephone~~

9

**number of each witness — and the**

10

**address and telephone number of each**

11                   witness other than a victim — that the  
12                   government intends to rely on to  
13                   establish that the defendant's presence  
14                   defendant was present at the scene of  
15                   the alleged offense; and

16                   (ii) (B) each government rebuttal witness to  
17                   the defendant's alibi defense.

18                   (B) *Victim's Address and Telephone Number.* If  
19                   the government intends to rely on a victim's  
20                   testimony to establish that the defendant was  
21                   present at the scene of the alleged offense and  
22                   the defendant establishes a need for the  
23                   victim's address and telephone number, the  
24                   court may:

25                   (i) order the government to provide the  
26                   information in writing to the defendant  
27                   or the defendant's attorney; or

4 FEDERAL RULES OF CRIMINAL PROCEDURE

28 (ii) fashion a reasonable procedure that  
29 allows preparation of the defense and  
30 also protects the victim's interests.

31 (2) ***Time to Disclose.*** Unless the court directs  
32 otherwise, an attorney for the government must  
33 give its Rule 12.1(b)(1) disclosure within 10 days  
34 after the defendant serves notice of an intended  
35 alibi defense under Rule 12.1(a)(2), but no later  
36 than 10 days before trial.

37 (c) **Continuing Duty to Disclose.**

38 (1) ***In General.*** Both an attorney for the government  
39 and the defendant must promptly disclose in  
40 writing to the other party the name; of each  
41 additional witness — and the address; and  
42 telephone number of each additional witness other  
43 than a victim — if:

44                   (A) (1) the disclosing party learns of the witness  
45                                           before or during trial; and

46                   (B) (2) the witness should have been disclosed  
47                                           under Rule 12.1(a) or (b) if the disclosing  
48                                           party had known of the witness earlier.

49                   (2) *Address and Telephone Number of an Additional*  
50                                           *Victim Witness.* The address and telephone  
51                                           number of an additional victim witness must not be  
52                                           disclosed except as provided in Rule 12.1  
53                                           (b)(1)(B).

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#### Committee Note

**Subdivisions (b) and (c).** The amendment implements the Crime Victims' Rights Act, which states that victims have the right to be reasonably protected from the accused and to be treated with respect for the victim's dignity and privacy. See 18 U.S.C. § 3771(a)(1) & (8). The rule provides that a victim's address and telephone number should not automatically be provided to the defense when an alibi defense is raised. If a defendant establishes a need for this information, the court has discretion to order its disclosure or to fashion an alternative procedure that provides the



defendant with the information necessary to prepare a defense, but also protects the victim's interests.

In the case of victims who will testify concerning an alibi claim, the same procedures and standards apply to both the prosecutor's initial disclosure and the prosecutor's continuing duty to disclose under subdivision (c).

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**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

The Committee made very minor changes in the text at the suggestion of the Style Consultant. The Committee revised the Note in response to public comments, omitting the suggestion that the court might upon occasion have the defendant and victim meet.

**Rule 17. Subpoena**

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**(c) Producing Documents and Objects.**

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**(3) Subpoena for Personal or Confidential**

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**Information About a Victim.** After a complaint,

6

**indictment, or information is filed, a subpoena**

7

**requiring the production of personal or confidential**



as a letter — on the grounds that it is unreasonable or oppressive. The rule recognizes, however, that there may be exceptional circumstances in which this procedure may not be appropriate. Such exceptional circumstances would include, evidence that might be lost or destroyed if the subpoena were delayed or a situation where the defense would be unfairly prejudiced by premature disclosure of a sensitive defense strategy. The Committee leaves to the judgment of the court a determination as to whether the judge will permit the question whether such exceptional circumstances exist to be decided *ex parte* and authorize service of the third-party subpoena without notice to anyone.

The amendment applies only to subpoenas served after a complaint, indictment, or information has been filed. It has no application to grand jury subpoenas. When the grand jury seeks the production of personal or confidential information, grand jury secrecy affords substantial protection for the victim's privacy and dignity interests.

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#### **CHANGES MADE TO PROPOSED AMENDMENT RELEASED FOR PUBLIC COMMENT**

The proposed amendment omits the language providing for *ex parte* issuance of a court order authorizing a subpoena to a third party for private or confidential information about a victim. The last sentence of the amendment was revised to provide that unless there are exceptional circumstances the court must give the victim notice before a subpoena seeking the victim's personal or confidential information can be served upon a third party. It was also revised to add the language "or otherwise object" to make it clear that the victim's objection might be lodged by means other than a motion, such as a letter to the court.

**Rule 18. Place of Prosecution and Trial**

1 Unless a statute or these rules permit otherwise, the  
2 government must prosecute an offense in a district where the  
3 offense was committed. The court must set the place of trial  
4 within the district with due regard for the convenience of the  
5 defendant, any victim, and the witnesses, and the prompt  
6 administration of justice.

**Committee Note**

The rule requires the court to consider the convenience of victims — as well as the defendant and witnesses — in setting the place for trial within the district. The Committee recognizes that the court has substantial discretion to balance any competing interests.

---

**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

There were no changes in the text of the rule. The Committee Note was amended to delete a statutory reference that commentators found misleading, and to draw attention to the court's discretion to balance the competing interests, which may be more important as the court must consider a new set of interests.

10 FEDERAL RULES OF CRIMINAL PROCEDURE

**Rule 32. Sentencing and Judgment**

1 (a) ~~[Reserved.]—Definitions.~~ The following definitions  
2 apply under this rule:

3 (1) ~~“Crime of violence or sexual abuse” means:~~

4 (A) ~~a crime that involves the use, attempted use,~~  
5 ~~or threatened use of physical force against~~  
6 ~~another’s person or property; or~~

7 (B) ~~a crime under 18 U.S.C. §§ 2241–2248 or~~  
8 ~~§§ 2251–2257.~~

9 (2) ~~“Victim” means an individual against whom the~~  
10 ~~defendant committed an offense for which the~~  
11 ~~court will impose sentence.~~

12 \* \* \* \* \*

13 (c) **Presentence Investigation.**

14 (1) *Required Investigation.*

15 \* \* \* \* \*

16 (B) *Restitution.* If the law ~~requires~~permits  
17 restitution, the probation officer must conduct  
18 an investigation and submit a report that  
19 contains sufficient information for the court  
20 to order restitution.

21 \* \* \* \* \*

22 (d) **Presentence Report.**

23 \* \* \* \* \*

24 (2) *Additional Information.* The presentence report  
25 must also contain the following information:

26 (A) the defendant's history and characteristics,  
27 including:

28 (i) any prior criminal record;

29 (ii) the defendant's financial condition; and

30 (iii) any circumstances affecting the

31 defendant's behavior that may be

12 FEDERAL RULES OF CRIMINAL PROCEDURE

32 helpful in imposing sentence or in  
33 correctional treatment;

34 (B) ~~verified~~ information, ~~stated in a~~  
35 ~~nonargumentative style,~~ that assesses the any  
36 financial, social, psychological, and medical  
37 impact on any victim ~~individual~~ against  
38 whom the offense has been committed;

39 \* \* \* \* \*

40 (i) **Sentencing.**

41 \* \* \* \* \*

42 (4) ***Opportunity to Speak.***

43 (A) *By a Party.* Before imposing sentence, the  
44 court must:

45 (i) provide the defendant's attorney an  
46 opportunity to speak on the defendant's  
47 behalf;

- 48 (ii) address the defendant personally in  
49 order to permit the defendant to speak  
50 or present any information to mitigate  
51 the sentence; and
- 52 (iii) provide an attorney for the government  
53 an opportunity to speak equivalent to  
54 that of the defendant's attorney.

55 (B) *By a Victim.* Before imposing sentence, the  
56 court must address any victim of ~~a~~the crime  
57 ~~of violence or sexual abuse~~ who is present at  
58 sentencing and must permit the victim to be  
59 reasonably heard ~~speak or submit any~~  
60 ~~information about the sentence. Whether or~~  
61 ~~not the victim is present, a victim's right to~~  
62 ~~address the court may be exercised by the~~  
63 ~~following persons if present:~~



14 FEDERAL RULES OF CRIMINAL PROCEDURE

- 64                            ~~(i) a parent or legal guardian, if the victim~~  
65                            ~~is younger than 18 years or is~~  
66                            ~~incompetent; or~~
- 67                            ~~(ii) one or more family members or~~  
68                            ~~relatives the court designates, if the~~  
69                            ~~victim is deceased or incapacitated.~~

70                            \* \* \* \* \*

**Committee Note**

**Subdivision (a).** The Crime Victims' Rights Act, codified as 18 U.S.C. § 3771(e), adopted a new definition of the term "crime victim." The new statutory definition has been incorporated in an amendment to Rule 1, which supersedes the provisions that have been deleted here.

**Subdivision (c)(1).** This amendment implements the victim's statutory right under the Crime Victims' Rights Act to "full and timely restitution as provided in law." *See* 18 U.S.C. § 3771(a)(6). Whenever the law permits restitution, the presentence investigation report should contain information permitting the court to determine whether restitution is appropriate.

**Subdivision (d)(2)(B).** This amendment implements the Crime Victims' Rights Act, codified at 18 U.S.C. § 3771. The amendment makes it clear that victim impact information should be treated in the same way as other information contained in the

presentence report. It deletes language requiring victim impact information to be “verified” and “stated in a nonargumentative style” because that language does not appear in the other subparagraphs of Rule 32(d)(2).

**Subdivision (i)(4).** The deleted language, referring only to victims of crimes of violence or sexual abuse, has been superseded by the Crime Victims’ Rights Act, 18 U.S.C. § 3771(e). The act defines the term “crime victim” without limiting it to certain crimes, and provides that crime victims, so defined, have a right to be reasonably heard at all public court proceedings regarding sentencing. A companion amendment to Rule 1(b) adopts the statutory definition as the definition of the term “victim” for purposes of the Federal Rules of Criminal Procedure, and explains who may raise the rights of a victim, so the language in this subdivision is no longer needed.

Subdivision (i)(4) has also been amended to incorporate the statutory language of the Crime Victims’ Rights Act, which provides that victims have the right “to be reasonably heard” in judicial proceedings regarding sentencing. *See* 18 U.S.C. § 3771(a)(4). The amended rule provides that the judge must speak to any victim present in the courtroom at sentencing. Absent unusual circumstances, any victim who is present should be allowed a reasonable opportunity to speak directly to the judge.

---

**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

No changes were made in the text of the rule. In response to public comments, the Committee Note was amended to make it clear that absent unusual circumstances any victim who is in the courtroom

should have a reasonable opportunity to speak directly to the judge.

#### **Rule 41. Search and Seizure**

1

\* \* \* \* \*

2

**(b) Authority to Issue a Warrant.** At the request of a federal law enforcement officer or an attorney for the government:

3

4

5

\* \* \* \* \*

6

**(3)** a magistrate judge — in an investigation of domestic terrorism or international terrorism — with authority in any district in which activities related to the terrorism may have occurred has authority to issue a warrant for a person or property within or outside that district; ~~and~~

7

8

9

10

11

12

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14

**(4)** a magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may

15 authorize use of the device to track the movement  
16 of a person or property located within the district,  
17 outside the district, or both; and

18 **(5)** a magistrate judge having authority in any district  
19 where activities related to the crime may have  
20 occurred, or in the District of Columbia, may issue  
21 a warrant for property that is located outside the  
22 jurisdiction of any state or district, but within any  
23 of the following:

24 **(A)** a United States territory, possession, or  
25 commonwealth;

26 **(B)** the premises — no matter who owns them —  
27 of a United States diplomatic or consular  
28 mission in a foreign state, including any  
29 appurtenant building, part of a building, or  
30 land used for the mission's purposes; or



Rule 41(b)(5) provides the authority to issue warrants for the seizure of property in the designated locations when law enforcement officials are required or find it desirable to obtain such warrants. The Committee takes no position on the question whether the Constitution requires a warrant for searches covered by the rule, or whether any international agreements, treaties, or laws of a foreign nation might be applicable. The rule does not address warrants for persons, which could be viewed as inconsistent with extradition requirements.

---

**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

With the assistance of the Style Consultant, the Committee revised (b)(5)(B) and (C) for greater clarity and compliance with the style conventions governing these rules. Because the language no longer tracks precisely the statute, the Committee Note was revised to state that the proposed rule is intended to have the same scope as the jurisdictional provision upon which it was based, 18 U.S.C. § 7(9).

**Rule 60. Victim's Rights**

1       **(a) In General.**

- 2               **(1) Notice of a Proceeding.** The government must use  
3                       its best efforts to give the victim reasonable,  
4                       accurate, and timely notice of any public court  
5                       proceeding involving the crime.

6           (2) Attending the Proceeding. The court must not  
7           exclude a victim from a public court proceeding  
8           involving the crime, unless the court determines by  
9           clear and convincing evidence that the victim's  
10          testimony would be materially altered if the victim  
11          heard other testimony at that proceeding. In  
12          determining whether to exclude a victim, the court  
13          must make every effort to permit the fullest  
14          attendance possible by the victim and must  
15          consider reasonable alternatives to exclusion. The  
16          reasons for any exclusion must be clearly stated on  
17          the record.

18          (3) Right to Be Heard on Release, a Plea, or  
19          Sentencing. The court must permit a victim to be  
20          reasonably heard at any public proceeding in the  
21          district court concerning release, plea, or  
22          sentencing involving the crime.





22 FEDERAL RULES OF CRIMINAL PROCEDURE

40 district where a defendant is being prosecuted for  
41 the crime.

42 **(5) Limitations on Relief.** A victim may move to  
43 reopen a plea or sentence only if:

44 (A) the victim asked to be heard before or during  
45 the proceeding at issue, and the request was  
46 denied;

47 (B) the victim petitions the court of appeals for a  
48 writ of mandamus within 10 days after the  
49 denial, and the writ is granted; and

50 (C) in the case of a plea, the accused has not  
51 pleaded to the highest offense charged.

52 **(6) No New Trial.** A failure to afford a victim any  
53 right described in these rules is not grounds for a  
54 new trial.

**Committee Note**

This rule implements several provisions of the Crime Victims' Rights Act, codified at 18 U.S.C. § 3771, in judicial proceedings in the federal courts.

**Subdivision (a)(1).** This subdivision incorporates 18 U.S.C. § 3771(a)(2), which provides that a victim has a "right to reasonable, accurate, and timely notice of any public court proceeding. . . ." The enactment of 18 U.S.C. § 3771(a)(2) supplemented an existing statutory requirement that all federal departments and agencies engaged in the detection, investigation, and prosecution of crime identify victims at the earliest possible time and inform those victims of various rights, including the right to notice of the status of the investigation, the arrest of a suspect, the filing of charges against a suspect, and the scheduling of judicial proceedings. *See* 42 U.S.C. § 10607(b) & (c)(3)(A)-(D).

**Subdivision (a)(2).** This subdivision incorporates 18 U.S.C. § 3771(a)(3), which provides that the victim shall not be excluded from public court proceedings unless the court finds by clear and convincing evidence that the victim's testimony would be materially altered by attending and hearing other testimony at the proceeding, and 18 U.S.C. § 3771(b), which provides that the court shall make every effort to permit the fullest possible attendance by the victim.

Rule 615 of the Federal Rules of Evidence addresses the sequestration of witnesses. Although Rule 615 requires the court upon the request of a party to order the witnesses to be excluded so they cannot hear the testimony of other witnesses, it contains an exception for "a person authorized by statute to be present." Accordingly, there is no conflict between Rule 615 and this rule, which implements the provisions of the Crime Victims' Rights Act.

**Subdivision (a)(3).** This subdivision incorporates 18 U.S.C. § 3771(a)(4), which provides that a victim has the “right to be reasonably heard at any public proceeding in the district court involving release, plea, [or] sentencing . . . .”

**Subdivision (b).** This subdivision incorporates the provisions of 18 U.S.C. § 3771(d)(1), (2), (3), and (5). The statute provides that the victim, the victim’s lawful representative, and the attorney for the government, and any other person as authorized by 18 U.S.C. § 3771(d) and (e) may assert the victim’s rights. In referring to the victim and the victim’s lawful representative, the committee intends to include counsel. 18 U.S.C. § 3771(e) makes provision for the rights of victims who are incompetent, incapacitated, or deceased, and 18 U.S.C. § 3771(d)(1) provides that “[a] person accused of the crime may not obtain any form of relief under this chapter.”

The statute provides that those rights are to be asserted in the district court where the defendant is being prosecuted (or if no prosecution is underway, in the district where the crime occurred). Where there are too many victims to accord each the rights provided by the statute, the district court is given the authority to fashion a reasonable procedure to give effect to the rights without unduly complicating or prolonging the proceedings.

Finally, the statute and the rule make it clear that failure to provide relief under the rule never provides a basis for a new trial. Failure to afford the rights provided by the statute and implementing rules may provide a basis for re-opening a plea or a sentence, but only if the victim can establish all of the following: the victim asserted the right before or during the proceeding, the right was denied, the victim petitioned for mandamus within 10 days as provided by 18 U.S.C. § 3771 (d)(5)(B), and — in the case of a plea — the defendant did not plead guilty to the highest offense charged.

---

**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

Subdivision (a)(2) was revised to make it clear that the duty to permit fullest attendance arises in the context of the victim's possible exclusion.

Subdivision (b)(2) was revised to respond to concerns that the amendments did not clearly state that the victim's lawful representative could assert the victim's rights. The Committee Note makes it clear that a victim or the lawful representative of a victim may generally participate through counsel, and provides that any other person authorized by 18 U.S.C. § 3771(d) and (e) may assert the victim's rights, such as persons authorized to raise the rights of victims who are minors or are incompetent.

References throughout subdivision (b) were revised to indicate that they were applicable to the victim's rights described in the Federal Rules of Criminal Procedure, not merely subdivision (a) of Rule 60.

Other minor changes were made at the suggestion of the Style Consultant to improve clarity.

**Rule ~~6160~~. Title**

- 1           These rules may be known and cited as the Federal
- 2           Rules of Criminal Procedure.

**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

No changes were made.

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

DAVID F. LEVI  
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CRIMINAL RULES

JERRY E. SMITH  
EVIDENCE RULES

**To:** Hon. David F. Levi, Chair  
Standing Committee on Rules of Practice and Procedure

**From:** Hon. Susan C. Bucklew, Chair  
Advisory Committee on Federal Rules of Criminal Procedure

**Subject:** Technical Amendment Correcting Cross-Reference in Criminal Rule 45

**Date:** June 5, 2007 (Revised June 28, 2007)

The restyling of the Civil Rules has created an unanticipated problem with the cross references in Criminal Rule 45(c), which governs computing and extending time. The Supreme Court has approved and transmitted to Congress an amendment to Criminal Rule 45(c) that clarifies the method of extending time. Both current Rule 45(c) and the amendment refer to service made in the manner provided under Civil Rule 5(b)(2)(B), (C), or (D). The restyling of the Civil Rules renumbers the provisions to which the current rule and the amendment refer as 5(b)(2)(C), (D), (E), and (F).

Rule 45(c) grants the parties an additional three days for action after certain forms of service. The effect of renumbering subdivisions of the Civil Rule (whether the amendment to Rule 45 is approved or not) is to make this additional three days unavailable in two classes of cases in which it is now available: those in which service is made by electronic means, and those in which service is made by other means that have been consented to in writing. The renumbering also adds three days in a class of cases in which it was not previously available: those in which service by leaving a paper at a person's home or office. Although the Civil Rules Advisory Committee had discussed whether to eliminate the additional three days for electronic filings, where delivery is instantaneous, it decided to retain the extra time for electronic filings to avoid discouraging them. The Criminal Rules Advisory Committee has not discussed any change in the application of the three day rule.

An additional amendment to Rule 45(c) is needed to preserve the status quo regarding the availability of the additional three days after service by electronic means or other means to which there has been written consent, and to eliminate the additional three days when service is made by leaving the papers at a home or office.

A proposed amendment and committee note are attached. (The text assumes that the amendment submitted by the Supreme Court to Congress will go into effect.) The Criminal Rules Committee has approved the proposed technical amendment.

**PROPOSED AMENDMENT TO THE FEDERAL  
RULES OF CRIMINAL PROCEDURE\***

**Rule 45. Computing and Extending Time**

1

\* \* \* \* \*

2       **(c) Additional Time After Certain Kinds of Service.**

3           Whenever a party must or may act within a specified  
4           period after service and service is made in the manner  
5           provided under Federal Rule of Civil Procedure  
6           5(b)(2)(~~B~~); (C), or (D), (E), or (F), 3 days are added after  
7           the period would otherwise expire under subdivision (a).

**Committee Note**

This amendment revises the cross references to Civil Rule 5,  
which have been renumbered as part of a general restyling of the  
Federal Rules of Civil Procedure. No substantive change is intended.

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\*New material is underlined; matter to be omitted is lined through.  
Includes amendment to rule that will take effect on December 1, 2007.



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

**Agenda E-19 (Appendix C)**  
**Rules**  
**September 2007**

DAVID F. LEVI  
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CHAIRS OF ADVISORY COMMITTEES

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**TO:           Honorable David F. Levi, Chair**  
**Standing Committee on Rules of Practice**  
**and Procedure**

**FROM:       Honorable Jerry E. Smith, Chair**  
**Advisory Committee on Evidence Rules**

**DATE:        May 15, 2007**

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

## **I. Introduction**

The Advisory Committee on Evidence Rules (“the Evidence Rules Committee” or “the Committee”) met on April 12<sup>th</sup> and 13<sup>th</sup> in Rancho Santa Fe, California. The Evidence Rules Committee approved one proposed amendment to the Evidence Rules — ultimately for direct enactment by Congress — with the recommendation that the Standing Committee approve it and recommend to the Judicial Conference that it be proposed to Congress. The proposed Rule 502 is discussed as an action item in this Report, along with the accompanying report to Congress and a separate report on selective waiver.

The Evidence Rules Committee also approved a report to Congress on the necessity and desirability of codifying a “harm-to-child” exception to the marital privileges. This report was prepared pursuant to the Adam Walsh Child Protection Act, which requires the Standing Committee to report to Congress on the necessity and desirability of codifying such an exception. The report is drafted as a report from the Standing Committee to Congress, and the Evidence Rules Committee recommends that the Standing Committee approve the report and send it to Congress. The report on the harm-to-child exception is discussed as a second action item in this Report.

The Evidence Rules Committee also discussed a proposal to add a time-counting rule to the Evidence Rules; it voted unanimously to take no action on the proposal, on the grounds that a time-counting rule was not necessary in the Evidence Rules and that implementation of such a rule, in the

context of parallel amendments to the Civil and Criminal Rules, would lead to confusion and litigation. The Evidence Rules Committee further decided to proceed with a restyling project. Finally, the Committee has decided to consider a possible amendment to Rule 804(b)(3), the hearsay exception for declarations against penal interest. The decisions on time-counting, restyling, and Rule 804(b)(3) are discussed as separate information items in this Report.

The draft minutes of the April 2007 meeting set forth a more detailed discussion of all the matters considered by the Evidence Rules Committee. Those minutes are attached to this Report. Also attached is the proposed amendment to Rule 502 and the accompanying report to Congress, and the proposed report to Congress on the harm-to-child exception to the marital privileges.

## **II. Action Items**

### **A. Proposed Rule 502 on Waiver of Attorney-Client Privilege and Work Product.**

The Evidence Rules Committee has found a number of problems with the current federal common law governing the waiver of attorney-client privilege and work product. One major problem is that significant amounts of time and effort are expended during litigation to preserve the privilege, even when many of the documents are of no concern to the producing party. Parties must be extremely careful, because if a privileged document is produced, there is a risk that a court will find a subject matter waiver that will apply not only to the instant case and document but to other cases and documents as well. Enormous expenses are put into document production in order to protect against inadvertent disclosure of privileged information, because the producing party risks a ruling that even a mistaken disclosure can result in a subject matter waiver. After a number of public hearings and extensive public comment, the Committee has determined that the discovery process would be more efficient and less costly if waiver rules are relaxed.

Another concern expressed to the Committee involves the production of confidential or work product material by a corporation that is the subject of a government investigation. Most federal courts have held that such a disclosure constitutes a waiver of the privilege, i.e., the courts generally reject the concept that a “selective waiver” is enforceable.

Concerns about the common law of waiver of privilege and work product have been voiced in Congress as well. The Chair of the House Judiciary Committee requested the Judicial Conference to initiate the rulemaking process to address the litigation costs and burdens created by the current law on waiver of attorney-client privilege and work product protection. It was recognized that any rule prepared by the Advisory Committee would eventually have to be enacted directly by Congress, as it would be a rule affecting privileges. See 28 U.S.C. § 2074(b).

In 2006 the Evidence Rules Committee prepared a draft rule that would address the problems of subject matter waiver, inadvertent disclosure, enforceability of confidentiality orders, and selective waiver. This draft rule was distributed to selected federal judges, state and federal regulators, members of the bar, and academics. On the first day of its April 2006 meeting, the Committee held

a mini-hearing on the proposed Rule 502 and Committee Note, inviting presentations from those who reviewed the rule. Based on comments received at the hearing, the Evidence Rules Committee revised the draft. Most importantly, the draft was scaled back so that it would not apply when a disclosure is made in state court and the waiver determination is made by a state court (the so-called “state to state” problem).

After discussion and review of the draft rule on waiver at its Fall 2006 meeting, the Committee unanimously agreed on the following basic principles, as embodied in the proposed Rule 502:

1. A subject matter waiver should be found only when privilege or work product has already been disclosed, and a further disclosure “ought in fairness” to be required in order to protect against a misrepresentation that might arise from the previous disclosure.

2. An inadvertent disclosure should not constitute a waiver if the holder of the privilege or work product protection acted reasonably to prevent disclosure and took reasonably prompt measures to rectify the error.

3. A provision on selective waiver should be included in any proposed rule released for public comment, but should be placed in brackets to indicate that the Committee had not yet determined whether a provision on selective waiver should be sent to Congress.

4. Parties to litigation should be able to protect against the consequences of waiver by seeking a confidentiality order from the court; and in order to give the parties reliable protection, that confidentiality order must bind non-parties in any federal or state court.

5. Parties should be able to contract around common-law waiver rules by entering into confidentiality agreements; but in the absence of a court order, these agreements cannot bind non-parties.

6. Rule 502 must apply in state court actions where the question considered by the state court is whether a disclosure previously made in federal court constitutes a waiver. If Rule 502 did not apply in such circumstances, then parties could not rely on it, for fear that any disclosure of privilege or work product in compliance with Rule 502 could nonetheless be found to be a waiver — even a subject matter waiver — in a subsequent action in state court.

After substantial discussion at the Spring 2006 meeting, the Evidence Rules Committee unanimously approved a proposed Rule 502 and the accompanying Committee Note for release for public comment. The Standing Committee released the rule for public comment. The public comment period ended in February 2007.

The Evidence Rules Committee received more than 70 public comments on proposed Rule 502, and held two public hearings at which more than 20 witnesses testified. At its April 2007 meeting, the Committee carefully considered all of the public comment, as well as other issues raised

by Committee members after extensive review of the text of proposed Rule 502. The following changes were made to proposed Rule 502 as it was issued for public comment:

1. Changes were made by the Style Subcommittee of the Standing Committee, both to the text as issued for public comment, and to the changes to the rule made at the April 2007 Evidence Rules Committee meeting.

2. The text was clarified to indicate that the protections of Rule 502 apply in all cases in federal court, including cases in which state law provides the rule of decision.

3. The text was clarified to stress that Rule 502 applies in state court with respect to the consequences of disclosures previously made at the federal level — despite any indication to the contrary that might be found in the language of Rules 101 and 1101.

4. Language was added to emphasize that a subject matter waiver cannot be found unless the waiver is intentional—so that an inadvertent disclosure can never constitute a subject matter waiver.

5. The Committee relaxed the requirements necessary to obtain protection against waiver from an inadvertent disclosure. As amended, the inadvertent disclosure provision assures that parties are not required to take extraordinary efforts to prevent disclosure of privilege and work product; nor are parties required to conduct a post-production review to determine whether any protected information has been mistakenly disclosed.

6. The protections against waiver by mistaken disclosure were extended to disclosures made to federal offices or agencies, on the ground that productions in this context can involve the same costs of pre-production privilege review as in litigation.

7. The selective waiver provision — on which the Evidence Rules Committee had never voted affirmatively — was dropped from the Proposed Rule 502. The Evidence Rules Committee approved a separate report to Congress on selective waiver, setting forth the arguments both in favor and against the doctrine, and explaining the Committee's decision to take no position on the merits of selective waiver. The Evidence Rules Committee also prepared language for a statute on selective waiver to accompany that separate report to Congress; while the Committee took no position on the merits, it determined that the language could be useful to Congress should it decide to proceed with a separate selective waiver provision.

8. The Committee deleted the language conditioning enforceability of federal court confidentiality orders on agreement of the parties. It concluded that a federal order finding that disclosure is not a waiver should be enforceable in any subsequent proceeding, regardless of party agreement.

9. The definition of work product was expanded to include intangible information, as the work product protection under federal common law extends to all materials prepared in anticipation of litigation, including intangibles.

After considering and approving these changes, the Evidence Rules Committee voted unanimously in favor of 1) Proposed Rule 502 as amended from the version issued for public comment; 2) a cover letter to Congress to accompany and explain Proposed Rule 502; and 3) a separate letter to Congress concerning selective waiver, taking no position on the merits, but including language for a selective waiver statute should Congress decide to proceed with separate legislation.\*

**Recommendation: The Evidence Rules Committee unanimously recommends that the Standing Committee 1) approve Proposed Evidence Rule 502, the cover letter to Congress accompanying the Proposed Rule, and the separate letter to Congress on selective waiver, and 2) refer those documents to the Judicial Conference with the recommendation that they be submitted to Congress.**

## **B. Report on the Harm-to-Child Exception to the Marital Privileges**

Public Law 109-248, the Adam Walsh Child Protection and Safety Act of 2006, directs the Evidence Rules Committee and the Standing Committee to “study the necessity and desirability of amending the Federal Rules of Evidence to provide that the confidential marital communications privilege and the adverse spousal privilege shall be inapplicable in any Federal proceeding in which a spouse is charged with a crime against 1) a child of either spouse; or (2) a child under the custody or control of either spouse.”

At its last two meetings, the Evidence Rules Committee researched and analyzed the necessity and desirability of amending the Evidence Rules to provide a “harm-to-child” exception to the marital privileges. The Committee has determined that almost all courts to consider the question have already adopted an exception to the marital privileges for cases in which the defendant is charged with harm to a child in the household. One recent federal case, however, refused to adopt a harm-to-child exception to the adverse testimonial privilege; that court allowed the defendant’s wife to refuse to testify even though the defendant was charged with sexually abusing a child in the household. The Committee has concluded, however, that this recent case is dubious authority, because its sole expressed rationale is that no court had yet established a harm-to-child exception, even though reported cases do in fact apply a harm-to-child exception in identical circumstances — including a previous case in the court’s own circuit.

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\* At its June 11-12, 2007, meeting, the Standing Committee decided not to forward the separate letter to Congress on selective waiver, but instead to make it available on request.

The Evidence Rules Committee determined that it would not itself propose an amendment to the Evidence Rules solely to respond to a recent aberrational decision that is not even controlling authority in its own circuit. Committee members also noted that an amendment to establish a harm-to-child exception would raise at least four other problems: 1) piecemeal codification of privilege law; 2) codification of an exception to a rule of privilege that is not itself codified; 3) difficulties in determining the scope of such an exception, e.g., whether it would apply to harm to an adult child, a step-child, etc.; and 4) policy disputes over whether it is a good idea to force the spouse, on pain of contempt, to testify adversely to the spouse, when it is possible that the spouse is also a victim of abuse.

The Evidence Rules Committee prepared a draft report to submit to the Standing Committee, styled as a report by the Standing Committee to Congress. The report concludes that an amendment to the Evidence Rules to codify a harm-to-child exception is neither necessary nor desirable. The Committee also decided, however, that the report should include draft language for a harm-to-child exception should Congress decide to consider codification of the exception. The following draft language was approved by the Evidence Rules Committee:

**Rule 50\_ . Exception to Spousal Privileges When Accused is Charged With Harm to a Child.** – The spousal privileges recognized under Rule 501 do not apply in a prosecution for a crime [define crimes covered] committed against a [minor] child of either spouse, or a child under the custody or control of either spouse.

The draft report of the Standing Committee to Congress is attached as an appendix to this Report.

**Recommendation: The Evidence Rules Committee recommends that the Standing Committee adopt the draft report on the harm-to-child exception to the marital privileges and refer the report to Congress.**

\* \* \* \* \*

Attachments:

Proposed Evidence Rule 502 and Committee Note.

\* \* \* \* \*

Draft report to Congress on the harm-to-child exception to the marital privileges.

\* \* \* \* \*

**PROPOSED AMENDMENT TO THE  
FEDERAL RULES OF EVIDENCE\***

**Rule 502. Attorney-Client Privilege and Work Product;  
Limitations on Waiver**

1           The following provisions apply, in the circumstances set  
2           out, to disclosure of a communication or information covered  
3           by the attorney-client privilege or work-product protection.

4           **(a) Disclosure made in a federal proceeding or to a**  
5           **federal office or agency; scope of a waiver.** — When the  
6           disclosure is made in a federal proceeding or to a federal  
7           office or agency and waives the attorney-client privilege or  
8           work-product protection, the waiver extends to an undisclosed  
9           communication or information in a federal or state proceeding  
10          only if:

- 11                   **(1) the waiver is intentional;**  
12                   **(2) the disclosed and undisclosed communications**  
13           **or information concern the same subject matter; and**

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\*New material is underlined.

2 FEDERAL RULES OF EVIDENCE

14 (3) they ought in fairness to be considered  
15 together.

16 (b) **Inadvertent disclosure.** — When made in a federal  
17 proceeding or to a federal office or agency, the disclosure  
18 does not operate as a waiver in a federal or state proceeding  
19 if:

20 (1) the disclosure is inadvertent;

21 (2) the holder of the privilege or protection took  
22 reasonable steps to prevent disclosure; and

23 (3) the holder promptly took reasonable steps to  
24 rectify the error, including (if applicable) following Fed. R.  
25 Civ. P. 26(b)(5)(B).

26 (c) **Disclosure made in a state proceeding.** — When  
27 the disclosure is made in a state proceeding and is not the  
28 subject of a state-court order concerning waiver, the  
29 disclosure does not operate as a waiver in a federal  
30 proceeding if the disclosure:



31           **(1)** would not be a waiver under this rule if it had  
32 been made in a federal proceeding; or

33           **(2)** is not a waiver under the law of the state where  
34 the disclosure occurred.

35           **(d) Controlling effect of a court order.** — A federal  
36 court may order that the privilege or protection is not waived  
37 by disclosure connected with the litigation pending before the  
38 court – in which event the disclosure is also not a waiver in  
39 any other federal or state proceeding.

40           **(e) Controlling effect of a party agreement.** — An  
41 agreement on the effect of disclosure in a federal proceeding  
42 is binding only on the parties to the agreement, unless it is  
43 incorporated into a court order.

44           **(f) Controlling effect of this rule.** — Notwithstanding  
45 Rules 101 and 1101, this rule applies to state proceedings and  
46 to federal court-annexed and federal court-mandated  
47 arbitration proceedings, in the circumstances set out in the

48 rule. And notwithstanding Rule 501, this rule applies even if  
49 state law provides the rule of decision.

50 **(g) Definitions.** — In this rule:

51 **(1)** “attorney-client privilege” means the  
52 protection that applicable law provides for confidential  
53 attorney-client communications; and

54 **(2)** “work-product protection” means the  
55 protection that applicable law provides for tangible material  
56 (or its intangible equivalent) prepared in anticipation of  
57 litigation or for trial.

**Explanatory Note on Evidence Rule 502**  
**Prepared by the Judicial Conference**  
**Advisory Committee on Evidence Rules**

This new rule has two major purposes:

1) It resolves some longstanding disputes in the courts about the effect of certain disclosures of communications or information protected by the attorney-client privilege or as work product — specifically those disputes involving inadvertent disclosure and subject matter waiver.

2) It responds to the widespread complaint that litigation costs necessary to protect against waiver of attorney-client privilege or work product have become prohibitive due to the concern that any disclosure (however innocent or minimal) will operate as a subject matter waiver of all protected communications or information. This concern is especially troubling in cases involving electronic discovery. *See, e.g., Hopson v. City of Baltimore*, 232 F.R.D. 228, 244 (D.Md. 2005) (electronic discovery may encompass “millions of documents” and to insist upon “record-by-record pre-production privilege review, on pain of subject matter waiver, would impose upon parties costs of production that bear no proportionality to what is at stake in the litigation”).

The rule seeks to provide a predictable, uniform set of standards under which parties can determine the consequences of a disclosure of a communication or information covered by the attorney-client privilege or work-product protection. Parties to litigation need to know, for example, that if they exchange privileged information pursuant to a confidentiality order, the court’s order will be enforceable. Moreover, if a federal court’s confidentiality order is not enforceable in a state court then the burdensome costs of privilege review and retention are unlikely to be reduced.

The rule makes no attempt to alter federal or state law on whether a communication or information is protected under the attorney-client privilege or work-product immunity as an initial matter. Moreover, while establishing some exceptions to waiver, the rule does not purport to supplant applicable waiver doctrine generally.

The rule governs only certain waivers by disclosure. Other common-law waiver doctrines may result in a finding of waiver even where there is no disclosure of privileged information or work product. *See, e.g., Nguyen v. Excel Corp.*, 197 F.3d 200 (5<sup>th</sup> Cir.

1999) (reliance on an advice of counsel defense waives the privilege with respect to attorney-client communications pertinent to that defense); *Ryers v. Burlison*, 100 F.R.D. 436 (D.D.C. 1983) (allegation of lawyer malpractice constituted a waiver of confidential communications under the circumstances). The rule is not intended to displace or modify federal common law concerning waiver of privilege or work product where no disclosure has been made.

**Subdivision (a).** The rule provides that a voluntary disclosure in a federal proceeding or to a federal office or agency, if a waiver, generally results in a waiver only of the communication or information disclosed; a subject matter waiver (of either privilege or work product) is reserved for those unusual situations in which fairness requires a further disclosure of related, protected information, in order to prevent a selective and misleading presentation of evidence to the disadvantage of the adversary. *See, e.g., In re United Mine Workers of America Employee Benefit Plans Litig.*, 159 F.R.D. 307, 312 (D.D.C. 1994) (waiver of work product limited to materials actually disclosed, because the party did not deliberately disclose documents in an attempt to gain a tactical advantage). Thus, subject matter waiver is limited to situations in which a party intentionally puts protected information into the litigation in a selective, misleading and unfair manner. It follows that an inadvertent disclosure of protected information can never result in a subject matter waiver. *See* Rule 502(b). The rule rejects the result in *In re Sealed Case*, 877 F.2d 976 (D.C.Cir. 1989), which held that inadvertent disclosure of documents during discovery automatically constituted a subject matter waiver.

The language concerning subject matter waiver — “ought in fairness” — is taken from Rule 106, because the animating principle is the same. Under both Rules, a party that makes a selective,

misleading presentation that is unfair to the adversary opens itself to a more complete and accurate presentation.

To assure protection and predictability, the rule provides that if a disclosure is made at the federal level, the federal rule on subject matter waiver governs subsequent state court determinations on the scope of the waiver by that disclosure.

**Subdivision (b).** Courts are in conflict over whether an inadvertent disclosure of a communication or information protected as privileged or work product constitutes a waiver. A few courts find that a disclosure must be intentional to be a waiver. Most courts find a waiver only if the disclosing party acted carelessly in disclosing the communication or information and failed to request its return in a timely manner. And a few courts hold that any inadvertent disclosure of a communication or information protected under the attorney-client privilege or as work product constitutes a waiver without regard to the protections taken to avoid such a disclosure. *See generally Hopson v. City of Baltimore*, 232 F.R.D. 228 (D.Md. 2005), for a discussion of this case law.

The rule opts for the middle ground: inadvertent disclosure of protected communications or information in connection with a federal proceeding or to a federal office or agency does not constitute a waiver if the holder took reasonable steps to prevent disclosure and also promptly took reasonable steps to rectify the error. This position is in accord with the majority view on whether inadvertent disclosure is a waiver.

Cases such as *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.*, 104 F.R.D. 103, 105 (S.D.N.Y. 1985) and *Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323, 332 (N.D.Cal. 1985), set out a multi-factor test for determining whether inadvertent disclosure is a waiver.

The stated factors (none of which is dispositive) are the reasonableness of precautions taken, the time taken to rectify the error, the scope of discovery, the extent of disclosure and the overriding issue of fairness. The rule does not explicitly codify that test, because it is really a set of non-determinative guidelines that vary from case to case. The rule is flexible enough to accommodate any of those listed factors. Other considerations bearing on the reasonableness of a producing party's efforts include the number of documents to be reviewed and the time constraints for production. Depending on the circumstances, a party that uses advanced analytical software applications and linguistic tools in screening for privilege and work product may be found to have taken "reasonable steps" to prevent inadvertent disclosure. The implementation of an efficient system of records management before litigation may also be relevant.

The rule does not require the producing party to engage in a post-production review to determine whether any protected communication or information has been produced by mistake. But the rule does require the producing party to follow up on any obvious indications that a protected communication or information has been produced inadvertently.

The rule applies to inadvertent disclosures made to a federal office or agency, including but not limited to an office or agency that is acting in the course of its regulatory, investigative or enforcement authority. The consequences of waiver, and the concomitant costs of pre-production privilege review, can be as great with respect to disclosures to offices and agencies as they are in litigation.

**Subdivision (c).** Difficult questions can arise when 1) a disclosure of a communication or information protected by the attorney-client privilege or as work product is made in a state proceeding, 2) the communication or information is offered in a

subsequent federal proceeding on the ground that the disclosure waived the privilege or protection, and 3) the state and federal laws are in conflict on the question of waiver. The Committee determined that the proper solution for the federal court is to apply the law that is most protective of privilege and work product. If the state law is more protective (such as where the state law is that an inadvertent disclosure can never be a waiver), the holder of the privilege or protection may well have relied on that law when making the disclosure in the state proceeding. Moreover, applying a more restrictive federal law of waiver could impair the state objective of preserving the privilege or work-product protection for disclosures made in state proceedings. On the other hand, if the federal law is more protective, applying the state law of waiver to determine admissibility in federal court is likely to undermine the federal objective of limiting the costs of production.

The rule does not address the enforceability of a state court confidentiality order in a federal proceeding, as that question is covered both by statutory law and principles of federalism and comity. See 28 U.S.C. § 1738 (providing that state judicial proceedings “shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken”). See also *Tucker v. Ohtsu Tire & Rubber Co.*, 191 F.R.D. 495, 499 (D.Md. 2000) (noting that a federal court considering the enforceability of a state confidentiality order is “constrained by principles of comity, courtesy, and . . . federalism”). Thus, a state court order finding no waiver in connection with a disclosure made in a state court proceeding is enforceable under existing law in subsequent federal proceedings.

**Subdivision (d).** Confidentiality orders are becoming increasingly important in limiting the costs of privilege review and retention, especially in cases involving electronic discovery. But the

utility of a confidentiality order in reducing discovery costs is substantially diminished if it provides no protection outside the particular litigation in which the order is entered. Parties are unlikely to be able to reduce the costs of pre-production review for privilege and work product if the consequence of disclosure is that the communications or information could be used by non-parties to the litigation.

There is some dispute on whether a confidentiality order entered in one case is enforceable in other proceedings. *See generally Hopson v. City of Baltimore*, 232 F.R.D. 228 (D.Md. 2005), for a discussion of this case law. The rule provides that when a confidentiality order governing the consequences of disclosure in that case is entered in a federal proceeding, its terms are enforceable against non-parties in any federal or state proceeding. For example, the court order may provide for return of documents without waiver irrespective of the care taken by the disclosing party; the rule contemplates enforcement of “claw-back” and “quick peek” arrangements as a way to avoid the excessive costs of pre-production review for privilege and work product. *See Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 290 (S.D.N.Y. 2003) (noting that parties may enter into “so-called ‘claw-back’ agreements that allow the parties to forego privilege review altogether in favor of an agreement to return inadvertently produced privilege documents”). The rule provides a party with a predictable protection from a court order — predictability that is needed to allow the party to plan in advance to limit the prohibitive costs of privilege and work product review and retention.

Under the rule, a confidentiality order is enforceable whether or not it memorializes an agreement among the parties to the litigation. Party agreement should not be a condition of enforceability of a federal court’s order.



**Subdivision (e).** Subdivision (e) codifies the well-established proposition that parties can enter an agreement to limit the effect of waiver by disclosure between or among them. Of course such an agreement can bind only the parties to the agreement. The rule makes clear that if parties want protection against non-parties from a finding of waiver by disclosure, the agreement must be made part of a court order.

**Subdivision (f).** The protections against waiver provided by Rule 502 must be applicable when protected communications or information disclosed in federal proceedings are subsequently offered in state proceedings. Otherwise the holders of protected communications and information, and their lawyers, could not rely on the protections provided by the Rule, and the goal of limiting costs in discovery would be substantially undermined. Rule 502(g) is intended to resolve any potential tension between the provisions of Rule 502 that apply to state proceedings and the possible limitations on the applicability of the Federal Rules of Evidence otherwise provided by Rules 101 and 1101.

The rule is intended to apply in all federal court proceedings, including court-annexed and court-ordered arbitrations, without regard to any possible limitations of Rules 101 and 1101. This provision is not intended to raise an inference about the applicability of any other rule of evidence in arbitration proceedings more generally.

The costs of discovery can be equally high for state and federal causes of action, and the rule seeks to limit those costs in all federal proceedings, regardless of whether the claim arises under state or federal law. Accordingly, the rule applies to state law causes of action brought in federal court.

**Subdivision (g).** The rule's coverage is limited to attorney-client privilege and work product. The operation of waiver by disclosure, as applied to other evidentiary privileges, remains a question of federal common law. Nor does the rule purport to apply to the Fifth Amendment privilege against compelled self-incrimination.

The definition of work product "materials" is intended to include both tangible and intangible information. See *In re Cendant Corp. Sec. Litig.*, 343 F.3d 658, 662 (3d Cir. 2003) ("work product protection extends to both tangible and intangible work product").

# **FORDHAM**

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Memorandum To: Standing Committee on Rules of Practice and Procedure  
From: Daniel Capra, Reporter, Advisory Committee on Evidence Rules  
Re: Draft report to Congress on "harm-to-child" exception to the marital privileges  
Date: May 15, 2007

Attached is the draft of a report to Congress on the necessity and desirability of codifying the "harm-to-child" exception to the marital privileges. This report is in response to the Congressional directive in the Adam Walsh Child Protection Act. At its Spring 2007 meeting the Evidence Rules Committee discussed the merits of amending the Evidence Rules to provide for a harm-to-child exception to the marital privileges. The Committee decided that such an amendment was not needed, but that a report to Congress should contain suggested language for an amendment should Congress decide to proceed.

The attached report explains the Evidence Rules Committee's determinations and recommends against an amendment, and also includes suggested language for amendment should Congress decide to proceed. It is styled as a report by the Standing Committee, because the Adam Walsh Act directs the Standing Committee to study the matter. The Evidence Rules Committee has approved the report, with the recommendation that the Standing Committee adopt it and send it to Congress.

**Report on the Necessity and Desirability of Amending the Federal Rules of Evidence to Codify a “Harm to Child” Exception to the Marital Privileges**



**PREPARED FOR THE  
U.S. SENATE AND HOUSE OF REPRESENTATIVES  
  
JUDICIAL CONFERENCE OF THE UNITED STATES  
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

**June 2007**

# **Report on the Necessity and Desirability of Amending the Federal Rules of Evidence to Codify a “Harm to Child” Exception to the Marital Privileges**

## **Judicial Conference Committee on Rules of Practice and Procedure**

June 15, 2007

### ***Introduction***

Public Law No. 109-248, the Adam Walsh Child Protection and Safety Act of 2006, was signed into law on July 27, 2006. Section 214 of the Act provides:

The Committee on Rules, Practice, Procedure, and Evidence of the Judicial Conference of the United States shall study the necessity and desirability of amending the Federal Rules of Evidence to provide that the confidential marital communications privilege and the adverse spousal privilege shall be inapplicable in any Federal proceeding in which a spouse is charged with a crime against--

- (1) a child of either spouse; or
- (2) a child under the custody or control of either spouse.

\* \* \*

This report of the Judicial Conference Committee on Rules of Practice and Procedure (“the Rules Committee”) is in response to the Section 214 directive. The Advisory Committee on Evidence Rules (“the Advisory Committee”) has conducted a thorough inquiry of the existing case law on the exceptions to the marital privileges that apply when a defendant is charged with harm to a child (the “harm to child” exception). The Advisory Committee has also reviewed the pertinent literature and considered the policy arguments both in favor and against a harm to child exception; and it has relied on its experience in preparing and proposing amendments to the Federal Rules of Evidence. The Advisory Committee has concluded — after extensive consideration and deliberation — that it is neither necessary nor desirable to amend the Evidence Rules to implement a harm to child exception to either of the marital privileges. The Rules Committee has reviewed the Advisory Committee’s work on this subject and agrees with the Advisory Committee’s conclusion.

This Report explains the conclusions reached by the Rules Committee and the Advisory Committee. It is divided into three parts. Part I discusses the Federal case law on the harm to child exception to the marital privileges. Part II discusses whether the costs of amending the Federal Rules of Evidence are justified by any benefits of codifying the harm to child exception; it concludes that the costs substantially outweigh the benefits. Part III sets forth suggested language for an amendment, should Congress nonetheless decide that it is necessary and desirable to amend the Federal Rules of Evidence to codify a harm to child exception to the marital privileges.

## ***I. Federal Case Law on the Harm to Child Exception***

### ***Basic Principles***

There are two separate marital privileges under Federal common law: 1) the adverse testimonial privilege, under which a witness has the right to refuse to provide testimony that is adverse to a spouse; and 2) the marital privilege for confidential communications, under which confidential communications between spouses are excluded from trial. The rationale for the adverse testimonial privilege is that it is necessary to preserve the harmony of marriages that exist at the time the testimony is demanded. The adverse testimonial privilege is held by the witness-spouse, not by the accused; the witness-spouse is free to testify against the accused but cannot be compelled to do so. *See Trammel v. United States*, 445 U.S. 40 (1980). The rationale of the confidential communications privilege is to promote the marital relationship at the time of the communication. The confidential communications privilege is held by both parties to the confidence. Thus, an accused can invoke the privilege to protect marital confidences even if the witness-spouse wishes to disclose them. *See United States v. Montgomery*, 384 F.3d 1050 (9<sup>th</sup> Cir. 2004).

These marital privileges are not codified in the Federal Rules of Evidence; they have been developed under the Federal common law, which establishes rules of privilege in cases in which Federal law provides the rule of decision. *See Fed.R.Evid.* 501.

The question posed by the Adam Walsh Child Protection Act is whether the Evidence Rules should be amended to codify an exception, under which information otherwise protected by either of the marital privileges would be admissible in a federal criminal case in which a spouse is charged with a crime against a child of either spouse or under the custody or control of either spouse. If such an exception were implemented, the following would occur in cases in which the defendant is charged with such a crime: 1) a spouse could be compelled, on pain of contempt, to testify against the defendant; and 2) a confidential communication made by an accused to a spouse would be disclosed by the witness over the accused's objection.

### ***Case Rejecting the Harm to Child Exception to the Adverse Testimony Privilege***

There is only one reported case in which a Federal court has upheld a claim of marital privilege in a prosecution involving a crime against a child under the care of one of the spouses. In *United States v. Jarvison*, 409 F.3d 1221 (10<sup>th</sup> Cir. 2005), the accused was charged with sexually abusing his granddaughter. The principal issue in the case was the validity of the defendant's marriage to a witness who had refused to testify based upon the privilege protecting a witness from being compelled to testify against a spouse. After holding that the marriage was valid, the court refused to apply a harm to child exception to the adverse testimonial privilege, and upheld the witness's privilege claim. The entirety of the court's analysis of the harm to child exception is as follows:

The government invites us to create a new exception to the spousal testimonial privilege akin to that we recognized in *United States v. Bahe*, 128 F.3d 1440 (10th Cir.1997). In *Bahe*, we recognized an exception to the marital communications privilege for voluntary spousal testimony relating to child abuse within the household. Federal courts recognize two marital privileges: the first is the testimonial privilege which permits one spouse to decline to testify against the other during marriage; the second is the marital confidential communications privilege, which either spouse may assert to prevent the other from testifying to confidential communications made during marriage. See *Trammel*, 445 U.S. at 44-46, 100 S.Ct. 906; *Bahe*, 128 F.3d at 1442; see also *Jaffee v. Redmond*, 518 U.S. 1, 11, 116 S.Ct. 1923, 135 L.Ed.2d 337 (1996) (recognizing justification of marital testimonial privilege as modified by *Trammel* because it “furthers the important public interest in marital harmony”). In order to accept the government’s invitation, we would be required not only to create an exception to the spousal testimonial privilege in cases of child abuse, but also to create an exception—not currently recognized by any federal court—allowing a court to compel adverse spousal testimony.

409 F.3d at 1231.

The court in *Jarvison* notes that its circuit had recognized a harm to child exception to the marital communications privilege in *United States v. Bahe*, 128 F.3d 1440, 1445-46 (10th Cir. 1997). The court in *Bahe* applied that exception to allow admission of the defendant’s confidential statements to his wife concerning the abuse of an eleven-year-old relative. The *Jarvison* court made no attempt to explain why a harm to child exception should apply to the marital confidential communications privilege, but not to the adverse testimonial privilege.

It is notable that the court in *Jarvison* did not cite relatively recent authority from its own circuit that applied the harm to child exception to the adverse testimonial privilege – the precise privilege involved in *Jarvison*. In *United States v. Castillo*, 140 F.3d 874 (10th Cir. 1998), the court, without discussing its reasons, applied *Bahe* and found no error when the defendant’s wife testified against him in a case involving abuse of the couples’ daughters. The defendant argued that his wife should have been told she had a privilege not to testify against him. But the court found that no warning was required because the defendant was charged with harm to a child of the marriage, and therefore the spouse had no adverse testimonial privilege to assert. For purposes of the harm to child exception, the *Castillo* court made no distinction between the adverse testimonial privilege and the confidential communications privilege.

It should also be noted that the *Jarvison* court implied more broadly that no Federal court had ever applied an exception that would compel adverse spousal testimony. In fact at least one Federal court has upheld an order compelling a witness to provide adverse testimony against a spouse. See, e.g., *United States v. Clark*, 712 F.2d 299 (7<sup>th</sup> Cir. 1983) (affirming a judgment of criminal contempt against a witness for refusing to testify against his spouse; holding that privilege could not be invoked to prevent testimony about acts that occurred before the marriage).

### *Cases Recognizing Harm to Child Exception*

All of the other federal cases dealing with the harm to child exception — admittedly limited in number — have applied it to both the adverse testimonial privilege and the confidential communications privilege.

#### *Marital Communications Privilege*

In *United States v. White*, 974 F.2d 1135, 1137-38 (9th Cir. 1992) the court permitted the defendant's wife to testify to a threat made to her by the defendant that he would kill both her daughter and her. The defendant was accused of killing his two-year-old stepdaughter, his wife's natural daughter. The court found that the marital communications privilege did not apply to the defendant's communication. The court stated:

The public policy interests in protecting the integrity of marriages and ensuring that spouses freely communicate with one another underlie the marital communications privilege. *See United States v. Roberson*, 859 F.2d 1376, 1370 (9th Cir. 1988). When balancing these interests we find that threats against spouses and a spouse's children do not further the purposes of the privilege and that the public interest in the administration of justice outweighs any possible purpose the privilege serve [sic] in such a case. . . . [T]he marital communications privilege should not apply to statements relating to a crime where a spouse of a spouse's children are the victims.

974 F.2d at 1138.

In *Bahe, supra*, the court relied upon the reasoning in *White* to apply a harm to child exception to the marital communications privilege. It noted as follows:

Child abuse is a horrendous crime. It generally occurs in the home. . . and is often covered up by the innocence of small children and by threats against disclosure. It would be unconscionable to permit a privilege grounded on promoting communications of trust and love between marriage partners to prevent a properly outraged spouse with knowledge from testifying against the perpetrator of such a crime.

138 F.3d at 1446.

The court also noted the strong state court authority, both in case law and by statute, for a harm to child exception to both of the marital privileges.

Similarly, in *United States v. Martinez*, 44 F. Supp. 2d 835 (W.D. Tex. 1999), the court held that the marital communications privilege was not applicable in a prosecution against a mother charged with abusing her minor sons. The court stated:



Children, especially those of tender years who cannot defend themselves or complain, are vulnerable to abuse. Society has a stronger interest in protecting such children than in preserving marital autonomy and privacy. 25 Wright & Graham, Federal Practice and Procedure § 5593 at 762 (1989). “A contrary rule would make children a target population within the marital enclave.” *Id.* at 761. See also 2 Louisell & Mueller, Federal Evidence, at 886 (1985). Society rightly values strong, trusting, and harmonious marriages. Yet, a strong marriage is more than the husband and wife, and it is more than merely an arrangement where spouses may communicate freely in confidence. A strong marriage also exists to nurture and protect its children. When children are abused at the hands of a parent, any rationale for protecting marital communications from disclosure must yield to those children who are the voiceless and powerless in any family unit.

The Court has made a thorough search of the law in this circuit and has found no authority that would preclude this exception to the communications privilege in the context of a child abuse case. Nor has the Court found any law in our nation’s jurisprudence that would extend the privilege under these circumstances. \* \* \*

The Court therefore concludes that in a case where one spouse is accused of abusing minor children, society’s interest in the administration of justice far outweighs its interest in protecting whatever harmony or trust may at that point still remain in the marital relationship. “Reason and experience” dictate that the marital communications privilege should not apply to statements relating to a crime where the victim is a minor child.

44 F. Supp. 2d at 837.

#### *Adverse Testimonial Privilege*

In *United States v. Allery*, 526 F.2d 1362 (8th Cir. 1975), the court held that the adverse testimonial privilege was not available because the defendant was charged with the attempted rape of his twelve-year-old daughter. The court declared as follows:

We recognize that the general policy behind the husband-wife privilege of fostering family peace retains vitality today as it did when it was first created. But, we also note that a serious crime against a child is an offense against that family harmony and to society as well.

Second, we note the necessity for parental testimony in prosecutions for child abuse. It is estimated that over ninety percent of reported child abuse cases occurred in the home, with a parent or parent substitute the perpetrator in eighty-seven and one-tenth percent of these cases. Evidentiary Problems in Criminal Child Abuse Prosecutions, 63 Geo. L. J. 257, 258 (1974).

526 F.2d at 1366.

In addition, as discussed above, the Tenth Circuit in *United States v. Castillo*, 140 F.3d 874 (10th Cir. 1998), found that the adverse testimonial privilege was not applicable in a prosecution against a defendant for the abuse of his children.

### ***Summary on Federal Case Law***

The federal cases generally establish a harm to child exception for both marital privileges. The only case to the contrary refuses to apply the exception to the adverse testimonial privilege. But that case, *Jarvison*, is dubious on a number of grounds:

1. Its analysis is perfunctory.
2. It fails to draw any reasoned distinction between a harm to child exception to the marital communications privilege (which it recognizes) and a harm to child exception to the adverse testimonial privilege (which it does not recognize).
3. It is contrary to a prior case in its own circuit that applied the harm to child exception to the adverse testimonial privilege.
4. Its rationale for refusing to establish the exception to the adverse testimonial privilege is that no federal court had yet established it. But the court ignored the fact that the exception had already been established not only by a court in its own circuit but also by the Eighth Circuit in *Allery*.
5. Its assertion that no federal court had ever compelled a witness to testify against a spouse is incorrect.

## ***II. The “Necessity and Desirability” of Amending the Federal Rules of Evidence to Include a Harm to Child Exception to the Marital Privileges.***

### **A. General Criteria for Proposing an Amendment to the Evidence Rules**

The Rules Committee and the Advisory Committee have long taken the position that amendments to the Evidence Rules should not be proposed unless 1) there is a critical problem in the application of the existing rules, and 2) an amendment would correct that problem without creating others. Amendments to the Evidence Rules come with a cost. The Evidence Rules are based on a shared understanding of lawyers and judges; they are often applied on a moment’s notice as a trial is progressing. Most of the Evidence Rules have been developed by a substantial body of case law. Changes to the Evidence Rules upset settled expectations and can lead to inefficiency and confusion in legal proceedings. Changes to the Evidence Rules may also create a trap for unwary lawyers who might not keep track of the latest amendments. Moreover, a change might result in unintended consequences that could lead to new problems, necessitating further amendments.

Generally speaking, amendments to the Evidence Rules have been proposed only when at least one of three criteria is found:

- 1) there is a split in the circuits about the meaning of the Rule, and that split has existed for such a long time that it appears that the Supreme Court will not rectify it;
- 2) the existing rule is simply unworkable for courts and litigants; or
- 3) the rule is subject to an unconstitutional application.

#### **B. Application of Amendment Criteria to Proposed Harm to Child Exception**

Under the accepted criteria for proposing an amendment to the Evidence Rules, set forth above, there is only one reason that could possibly support an amendment proposing a harm to child exception to the marital privileges: a split in the circuits. The current common law approach is workable, in the sense of being fairly easily applied to any set of facts; if there is an exception, it applies fairly straightforwardly, and if there is no exception, there is no issue of application, because the privilege would apply. Nor is the current state of the common law subject to unconstitutional application, as there appears to be no constitutional issue at stake in the application of a harm to child exception to the marital privileges. So the split in the courts is the only legitimate traditional basis for proposing an amendment to codify a harm to child exception to the marital privileges.

But the split in the courts over the harm to child exception, discussed above, is different from the usual split that supports a proposal to amend an Evidence Rule. Two recent amendments are instructive for comparison. The amendment to Evidence Rule 408, effective December 1, 2006, was necessitated because the circuits were split over the admissibility of civil compromise evidence in a subsequent criminal case. The admissibility of civil compromise evidence in a subsequent criminal prosecution is a question that arises quite frequently, given the often parallel tracks of civil and criminal suits concerning the same misconduct. The circuits were basically evenly split on the question, and ten circuits had written decisions on the subject; it was not just one outlying case creating the conflict. Moreover, the proper resolution of the admissibility of compromise evidence in criminal prosecutions was one on which reasonable minds could differ. The disagreement was close on the merits and it was unlikely that any circuit would re-evaluate the question and reverse its course. Finally, the dispute among the circuits was at least 15 years old, so it appeared that the Supreme Court was unlikely to intervene as it had not already done so.

The amendment to Evidence Rule 609, effective December 1, 2006, was similar. The circuits disagreed on whether a trial court could go behind a conviction and review its underlying facts to determine whether the crime involved dishonesty or false statement, and thus was automatically admissible under Rule 609(a)(2). Every circuit had weighed in, and there was a reasonable disagreement on the question. Again, the disputed question was one that arose frequently in federal litigation, and the dispute was at least 10 years old.

In contrast, the split among the circuits over the harm to child exception is not deep; it is not wide; it is not longstanding; the issue arises only rarely in Federal courts; and the dispute is not one in which courts on both sides have reached a considered resolution after reasonable argument.

It is notable that there is no disagreement at all about the applicability of the harm to child exception to the marital privilege for *confidential communications*. All of the reported federal court cases have agreed with and applied this exception. So there is no conflict to rectify, and accordingly there would appear to be no need to undertake the costs of amending the Evidence Rules to codify a harm to child exception to the confidential communications privilege.

As to the adverse testimonial privilege, there is a conflict, but it is not a reasoned one. As discussed above, the court in *Jarvison* created this conflict without actually analyzing the issue; without proffering a reasonable distinction between the two marital privileges insofar as the harm to child exception applies; and without citing or recognizing two previous cases with the opposite result, including a case in its own circuit. Indeed it can be argued that there is no conflict at all, because a court in the Tenth Circuit after *Jarvison* is bound to follow not *Jarvison* but its previous precedent, *Castillo*, which applied a harm to child exception to the adverse testimonial privilege.

In sum, an amendment providing for a harm to child exception to the marital privileges does not rise to the level of necessity that traditionally has justified an amendment to the Evidence Rules.

### **C. Other Problems That Might Be Encountered In Proposing an Amendment Adding a Harm to Child Exception**

Beyond the fact that an amendment establishing a harm to child exception does not fit the ordinary criteria for Evidence Rules amendments, there are other problems that are likely to arise in the enactment of such an amendment.

#### ***1. Questions of Scope of the Harm to Child Exception***

Drafting a harm to child exception will raise a number of knotty questions concerning its scope. The most difficult question of scope is determining which children would trigger the exception. Questions include whether the exception should cover harm to stepchildren, foster-children, and grandchildren. Strong arguments can be made that the exception should cover harm to children who are not related to the defendant or the witness, but who are within the custody or control of either spouse. But the term “custody or control” may raise questions of application that need to be considered, because it can be argued that a child was by definition within the defendant’s custody or control when victimized by the defendant.

Another difficult question of scope is whether the harm to child exception should cover crimes against children older than a certain age. If a judgment is made that the exception should not be so broad as to cover, say, a father defrauding his adult son in a business transaction, then the question will be where to draw the line — adulthood, 16 years of age, etc.

Another question of scope is whether the harm to child exception should apply to *any* crime against a child. Certainly some crimes are more serious than others and so consideration might need to be given to distinguishing between crimes that are serious enough to trigger the exception and crimes that are not. A possible dividing line would be between crimes of violence and crimes of a financial nature. But even if that distinction has merit, the dividing line would have to be drafted carefully.

As discussed above, there are only a few federal cases on the subject of the existence of a harm to child exception, and none of these decisions provide analysis of the scope of such an exception. State statutes and cases are not uniform on the scope of the exception; for example, some states do not apply the exception where the crime is against an adult, while others set the age at 16. Codifying the harm to child exception runs the risk that important policy decisions about the scope of the amendment will have to be made without substantial support in the case law, and without the benefit of empirical research. Without such foundations, it is possible that an amendment could create problems of application that could lead to the necessity of a further amendment and all its attendant costs.

## ***2. Policy Questions in Adopting the Harm to Child Exception to the Adverse Testimonial Privilege***

Besides these questions of scope, the harm to child exception raises difficult policy questions as applied to the adverse testimonial privilege. The adverse testimonial privilege is held by the witness-spouse; if there is an exception to that privilege, the spouse can be compelled to testify, and accordingly, can be imprisoned for refusing to testify. The harm to child exception would apply to cases in which the defendant-spouse is charged with intrafamilial abuse. In at least some cases, it is possible that the child is not the only victim of abuse at the hands of the defendant — the witness-spouse may be a victim as well. It is commonly estimated that such overlapping abuse occurs in 40-60% of domestic violence cases; for example, a national survey of 6,000 families revealed a 50% assault rate for children of battered mothers. M.A. Straus and R.J. Gelles, *Physical Violence in American Families* (1996). In such cases, if the victim of domestic abuse is compelled to testify, the witness may suffer a risk of further harm from the defendant for providing adverse testimony. Application of the harm to child exception could place the spouse in the difficult circumstances of choosing between physical harm at the hands of the accused and a jail sentence for contempt.

Another problem is that the witness-spouse may suffer a personal risk of incrimination in testifying, because the witness-spouse may be subject to criminal prosecution for neglect or complicity. See *State v. Burrell*, 160 S.W.3d 798 (Mo. 2005) (prosecution of mother for endangering her child by permitting the child to have contact with an abusive father). In such cases, the harm to child exception will not assure the witness's testimony, because the witness who is reluctant to testify can still invoke her Fifth Amendment privilege.

However these policy questions should be resolved, they raise difficult issues and would seem to counsel caution (and perhaps empirical research) before a harm to child exception to the

adverse testimonial privilege is codified. See generally Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 Harv. L.Rev. 1849 (1996) (discussing the debate and research on whether forcing a victim of domestic abuse to testify against the abuser will be beneficial or detrimental to the victim).

### ***3. Departure from the Common Law Approach to Privilege Development***

Federal Rule of Evidence 501 provides that privileges “shall be governed by the principles of the common law as they may be interpreted in the light of reason and experience.” The Rule gives the federal courts the primary responsibility for developing evidentiary privileges. When the Federal Rules were initially proposed, Congress rejected codification of the privileges, in favor of a common law, case-by-case approach. Given this background, it does not appear to be advisable to single out an exception to the marital privileges for legislative enactment. Amending the Federal Rules to codify such an exception would create an anomaly: that very specific, and rarely applicable, exception would be the only codified rule on privilege in the Federal Rules of Evidence. All of the other federally-recognized privileges would be grounded in the common law — including the very privilege to which there would be a codified exception. The Rules Committee and the Advisory Committee conclude that such an inconsistent, patchwork approach to federal privilege law is unnecessary and unwarranted, especially given the infrequency of cases involving a harm to child exception to the marital privileges. Granting special legislative treatment to one of the least-invoked exceptions in the federal courts is likely to result in confusion for both Bench and Bar.

The strongest argument for codifying an exception to a privilege is that the courts are in dispute about its existence or scope and this dispute is having a substantial effect on legal practice. But as stated above, any dispute in the courts about the existence of a harm to child exception is the result of a single case that is probably not controlling in its own circuit. Moreover, the application of the harm to child exception arises so infrequently that it can be argued that if a dispute exists, it does not justify this kind of special, piecemeal treatment.<sup>1</sup>

### ***III. Draft Language for a Harm to Child Exception to the Marital Privileges***

As stated above, the Rules Committee concludes that the benefits of codifying a harm to child exception to the marital privileges are substantially outweighed by the costs of such an amendment to the Federal Rules of Evidence. The Rules Committee recognizes, however, that there

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<sup>1</sup> The situation can be usefully contrasted with the proposed Rule 502 that has been approved by the Advisory Committee and is currently being considered by the Rules Committee. That rule is intended to protect litigants from some of the consequences of waiver of attorney-client privilege and work product that arise under federal common law. The Rules Committee has received widespread comment from the Bench and Bar that such protection is necessary in order to reduce the costs of pre-production privilege review in electronic discovery cases — dramatic costs that arise in almost every civil litigation. And federal courts are in dispute both on when waiver is to be found and on the scope of waiver.

are policy arguments supporting such an exception, and is sympathetic to the concern that the *Jarvison* case raises some doubt about whether there is a harm to child exception to the adverse testimonial privilege, at least in the Tenth Circuit. Accordingly, the Rules Committee has prepared language that could be used to codify a harm to child exception to the marital privileges, in the event that Congress determines that codification is necessary.

**The draft language is as follows:**

**Rule 50\_. Exception to Spousal Privileges When Accused is Charged With Harm to a Child**

The spousal privileges recognized under Rule 501 do not apply in a prosecution for a crime [define crimes covered] committed against a [minor] child of either spouse, or a child under the custody or control of either spouse.

The draft language raises a number of questions on the scope of the harm to child exception. Those questions include:

1) Should the exception apply to harm to adult children? The draft puts the term “minor” in brackets as a drafting option. Another option is to provide a different age limit, such as 16. The Rules Committee notes that some state codifications limit the exception to harm to children of a certain age. *See, e.g.*, Mich. Comp. Law. Ann. § 600.2162 (18 years of age). Other states provide no specific age limitation. *See, e.g.*, Wash.Rev.Code § 5.60.060(1) (no age limit for harm to child exception).

2) Should the exception cover harm to children who are not family members but are present in the household at the time of the injury? The draft language covers, for example, harm to children who are visiting the household, so long as they are within the custody or control of either spouse. The draft language also covers harm to step-children, foster-children, etc. The Rules Committee notes that the states generally apply the harm to child exception to cover cases involving harm to a child within the custody or control of either spouse. *See, e.g.*, *Daniels v. State*, 681 P.2d 341 (Alaska 1984) (harm to child exception applied to foster-child); *Stevens v. State*, 806 So.2d. 1031 (Miss. 2001) (exception for crimes against children applied in case in which defendant charged with murder of unrelated children); *Meador v. State*, 711 P.2d 852 (Nev. 1985) (statute providing exception to spousal testimony privilege for child in “custody or control” covered children spending the night with defendant’s daughters); *State v. Waleczek*, 585 P.2d 797 (Wash. 1978) (term “guardian” in statute included situation in which couple voluntarily assumed care of child even though no legal appointment as guardian). As discussed above, however, some consideration might be given to whether “custody or control” might be so broad as to cover harm to any child that is allegedly injured by an accused.

3) Should the exception be extended to crimes involving harm to the witness-spouse? The draft language does not cover such crimes, as the mandate from the Adam Walsh Child Protection and Safety Act was limited to the harm to child exception. The Rules Committee notes, however, that a number of states provide for statutory exceptions to the marital privileges that cover harm to spouses as well as harm to children. *See, e.g.,* Colo. Rev. Stat. § 13-90-107 (exception to adverse testimonial privilege where the defendant is charged with a crime against the witness-spouse); Wis. Stat. § 905.05 (providing an exception to both marital privileges in proceedings in which “one spouse or former spouse is charged with a crime against the person or property of the other or of a child of either”). *See also United States v. White*, 974 F.2d 1135, 1137-38 (9th Cir. 1992) (confidential communications privilege did not apply because the defendant was charged with harming his spouse); Holmes, *Marital Privileges in the Criminal Context: The Need for a Victim-Spouse Exception in the Texas Rules of Criminal Evidence*, 28 Hous. L.Rev. 1095 (1991).

4) Should the exception cover all crimes against a child? The draft language contains a bracket if the decision is made to specify the crimes that trigger the exception.

### ***Conclusion***

The Rules Committee and the Advisory Committee conclude that it is neither necessary nor desirable to amend the Federal Rules of Evidence to codify a harm to child exception to the marital privileges. The substantial cost of promulgating an amendment to the Evidence Rules is not justified, given that Federal common law (which Congress has mandated as the basic source of Federal privilege law) already provides for a harm to child exception — but for a single decision that is probably not good authority within its own circuit. Codifying a harm to child exception would also raise difficult policy and drafting questions about the scope of such an exception — questions that will be difficult to answer without reference to the kind of particular fact situations that courts evaluate under a common-law approach.