

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

**SUBMITTED FOR PUBLIC COMMENT**

*Comments Due by February 15, 2007*

Administrative Office of the U. S. Courts

James C. Duff, Director

**A SUMMARY FOR BENCH AND BAR  
(AUGUST 2006)**

REQUEST FOR COMMENT ON PROPOSED  
AMENDMENTS TO THE FEDERAL RULES  
OF PRACTICE AND PROCEDURE

The Judicial Conference's Advisory Committees on Bankruptcy Rules, Criminal Rules, and Evidence Rules have proposed amendments to various rules and forms and are seeking public comment on the proposed changes. The Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee) **has not approved these proposals** but submits them for public comment. The proposals have not been presented to the Judicial Conference or the Supreme Court.

The full text of the proposed rules amendments and explanatory Committee Notes is set out in the *Request for Comment* pamphlet, which is posted at <[www.uscourts.gov/rules](http://www.uscourts.gov/rules)> and available on request from the Secretary to the Standing Committee. The following synopses highlight the major aspects of the proposed Bankruptcy, Criminal, and Evidence Rule amendments.

The rules committees welcome all comments, whether favorable, adverse, or otherwise. All comments from the public on these proposals will be considered carefully by the respective rules committees, which consist of experienced trial and appellate lawyers, scholars, and judges.

Written comments or comments sent electronically must be received by the Secretary to the Standing Committee **no later than February 15, 2007**. Comments may be sent electronically to <[Rules\\_Comments@ao.uscourts.gov](mailto:Rules_Comments@ao.uscourts.gov)>.

An opportunity is also provided to the public to appear at public hearings to testify regarding the proposals. Requests to appear at a public hearing must be received by the Secretary to the Standing Committee no later than 30 days prior to the scheduled date for the hearing. Information on the Secretary's address and the dates and places of the public hearings is at the end of this brochure.

Following the public comment period, all amendments require approval by the relevant advisory committee, the Standing Committee, the Judicial Conference, and the Supreme Court. Under the proposed schedule, any approved changes (except proposed Evidence Rule 502, which requires an affirmative act of Congress) would take effect on December 1, 2008, unless altered by Congress.

**I. Proposed Amendments to the Federal Rules of Bankruptcy Procedure:**

In August 2005, the Committee on Rules of Practice and Procedure approved Interim Bankruptcy Rules and the Judicial Conference approved Official Forms to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which generally became effective on October 17, 2005. Most of the amendments and new rules proposed to the Bankruptcy Rules are based on the Interim Rules, which were adopted by bankruptcy courts in local rules or general orders until final rules could be put in place to implement the Act. Based on the courts' favorable experience with the Interim

Rules, the proposed amendments to the national rules use language almost identical to the language used in the Interim Rules, with only slight adjustments to certain rules. A handful of new amendments and rules, which were not included in the Interim Rules, are proposed to address various provisions in the 2005 Act that did not require immediate implementation.

The Advisory Committee on Bankruptcy Rules also recommended that the revised Official Forms—which took effect in October 2005 with certain minor revisions without the benefit of public input because of the 2005 Bankruptcy Act’s short deadlines—be published for comment to provide the bench and bar with an opportunity to raise any concerns with them.

**Rule 1005** (Caption of Petition) requires the disclosure of all names used by the debtor in the past eight rather than six years. The rule also requires disclosure of the last four digits of an individual debtor’s taxpayer-identification number.

**Rule 1006** (Filing Fee) is unchanged from the Interim Rule. The rule allows courts to waive filing fees or allow debtors to pay in installments.

**Rule 1007** (Lists, Schedules, Statements, and other Documents; Time Limits) requires debtors to file a variety of documents mandated under the Act. The amendments limit the extension of time that may be granted to small-business debtors to file schedules and statements. The amendments also require 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.

**Rule 1009** (Amendments of Voluntary Petitions, Lists, Schedules, and Statements) is unchanged from the Interim Rule and corrects a cross-reference to the Code.

**Rule 1010** (Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign Nonmain Proceeding) requires service of a summons and petition on the debtor and any entity against whom the representative is seeking additional relief in a pending foreign nonmain proceeding.

**Rule 1011** (Responsive Pleading or Motion in Involuntary and Cross-Border Cases) conforms to the new proceedings governing chapter 15, including a requirement that a corporation involved in a cross-border insolvency case file a corporate disclosure ownership statement.

**Rule 1015** (Consolidation or Joint Administration of Cases Pending in Same Court) is unchanged from the Interim Rule and conforms cross-references to renumbered § 522 of the Code.

**Rule 1017** (Dismissal or Conversion of Case; Suspension) permits parties in interest to move to dismiss a chapter 7 consumer-debt case as abusive, and requires the parties to file a motion stating the circumstances of the alleged abuse.

**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 of a case from chapter 13 to chapter 7.

**Rule 1020** (Small Business Chapter 11 Reorganization Case) completely replaces the old rule and provides procedures to determine whether the debtor is a small business.

**Rule 1021** (Health Care Business Case) provides procedures for designating a debtor as a health-care business.

**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 to promptly provide all creditors a copy of the trustee's statement as to whether the debtor's case would be presumed to be an abuse.

**Rule 2003** (Meeting of Creditors or Equity Security Holders) is unchanged from the Interim Rule. The amendment 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.

**Rule 2007.1** (Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case) is also unchanged from the Interim Rule. The amendments require 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.

**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 all health-care business cases unless the court finds it is not necessary for the protection of patients. The rule also sets procedures for a party in interest to file a motion to appoint or object to the appointment of an ombudsman.

**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.

**Rule 2015.1** (Patient Care Ombudsman) governs reports issued by the health-care ombudsman and protection of patient privacy when the ombudsman requests access to patient records.

**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.

**Rule 2015.3** (Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest) is a new rule not included in the Interim Rules, requiring 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.

**Rule 3002** (Filing Proof of Claim or Interest), which sets the time period for filing proofs of government claims based on tax returns, would be revised to conform to the new time period required by the Act.

**Rule 3003** (Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases) is unchanged from the Interim Rule and requires a creditor with a foreign address be provided such additional time as reasonable to file proofs of claim in a chapter 9 or 11 case.

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

states 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.

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

**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 by an individual debtor in a chapter 11 case.

**Rule 4002** (Duties of Debtor) requires a debtor to provide a government-issued photo identification and evidence of a social security number, current income, recent Federal income tax returns or tax transcripts, and financial accounts existing at the time of the commencement of the case.

**Rule 4003** (Exemptions) allows a trustee to object to an exemption at any time up to one year after the closing of the case if the exemption was fraudulent. The amendment also conforms to § 522(q) of the Code, as revised by the Act, which limits the state homestead exemption to \$125,000 if the debtor had been convicted of a felony or owed a debt arising from certain causes of action.

**Rule 4004** (Grant or Denial of Discharge) requires a debtor to complete a financial management program before the court may enter a discharge, and allows the court to postpone 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.

**Rule 4006** (Notice of No Discharge) provides that notice will be given to all parties in interest, including the debtor, that no discharge was entered.

**Rule 4007** (Determination of Dischargeability of a Debt) is unchanged from the Interim Rule. The amendment expands the exceptions to discharge upon completion of a chapter 13 plan.

**Rule 4008** (Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement) establishes a deadline for filing reaffirmation agreements. The rule also requires a debtor to file a signed statement showing total income and expenses and an explanation of any discrepancies.

**Rule 5001** (Courts and Clerks' Offices) was not included in the Interim Rules. The rule 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).

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

**Rule 5008** (Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors) requires clerks to give written notice to all creditors not later than 10 days after the filing of a petition that a presumption of abuse has arisen.

**Rule 5012** (Communication and Cooperation With Foreign Courts and Foreign Representatives) provides an

opportunity for parties in a case involving cross-border insolvency to participate on timely request in a court's communication with a foreign court or a foreign representative.

**Rule 6004** (Use, Sale, or Lease of Property) requires the appointment of a consumer-privacy ombudsman when a trustee proposes to sell personally identifiable information.

**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.

**Rule 8001** (Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals) authorizes appeals directly to the courts of appeals upon certification either by the bankruptcy or district court or the bankruptcy appellate panel.

**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.

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

**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.

**Official Form 1** (Voluntary Petition) is amended to assist the courts in fulfilling the new statistical reporting requirements of 28 U.S.C. § 159. Additionally, a new section has been added to the form titled **Exhibit D** (Individual Debtor's Statement of Compliance with Credit Counseling Requirement) to ensure that debtors are aware of the prepetition credit counseling requirement.

**Official Form 3A** (Application to Pay Filing Fee in Installments) is 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 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) allows a court to waive the filing fee or permit the debtor to pay in installments in a case under chapter 7, as stated in Rule 1006(c).

**Official Form 4** (List of Creditors Holding 20 Largest Unsecured Claims) provides more detail concerning notification to a guardian or other adult when a minor child is a creditor in a bankruptcy case.

**Official Form 5** (Involuntary Petition) is amended to facilitate collection of statistical information.

**Official Form 6** (Schedules) is amended to assist a court in fulfilling the new statistical reporting requirements of 28 U.S.C. § 159. In addition, the description of the information to be provided concerning social-security and other taxpayer-identification numbers has been revised in conformity with proposed new Rule 9037.

**Official Form 7** (Statement of Financial Affairs) conforms with proposed new Rule 9037 regarding privacy

protection. That rule is proposed to become effective on December 1, 2007.

**Official Form 8** (Chapter 7 Individual Debtor's Statement of Intention) is unchanged from the October 2005 version. At that time, a section was added covering personal property subject to an unexpired lease and an option labeled "lease will be assumed pursuant to 11 U.S.C. § 362(h)(1)(A)" to the choices a debtor may make.

**Official Form 9** (Notice of Commencement of Case, Meeting of Creditors and Deadlines) adds "family fisherman" as a category of debtor eligible for bankruptcy relief under chapter 12 of the Bankruptcy Code.

**Official Form 10** (Proof of Claim) conforms with the changed priority scheme in § 507(a) of the Code. The form is also amended to provide more accurate addresses for transmittal of payments and notices, to indicate that a particular proof of claim has been replaced, and to 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) require disclosure of all names used by the debtor in the past eight rather than six years and require the use of only the last four digits of an individual debtor's taxpayer-identification number. The explanation portion is also amended to reflect changes to the Bankruptcy Code governing nondischargeability of certain obligations.

**Official Form 19A** (Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer) changes the former "certification" to "declaration" and contains additional language mandated by the 2005 Act.

**Official Form 19B** (Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer) is unchanged from the October 2005 version. The new form contains the notice that a non-attorney bankruptcy petition preparer is required to give a debtor, advising that the preparer is not an attorney and must not give legal advice.

**Official Form 21** (Statement of Social-Security Number) directs taxpayers who do not have a social-security number to provide a taxpayer-identification number on the form.

**Official Form 22A** (Chapter 7 Statement of Current Monthly Income and Means-Test Calculation) contains stylistic changes throughout. Additionally, the phrase "in default" has been deleted in recognition that a debtor may be required to make additional payments to a creditor even if the loan is not in default.

**Official Form 22B** (Chapter 11 Statement of Current Monthly Income) is unchanged from the October 2005 version. The form allows calculation of disposable income under judicially-determined standards, rather than pursuant to the means-test deductions specified for higher-income chapter 13 debtors.

**Official Form 22C** (Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income) requires all chapter 13 debtors, including those whose income is below the applicable median, to complete

Part III of the form. Also, the phrase “in default” has been deleted.

**Official Form 23** (Debtor’s Certification of Completion of Instructional Course Concerning Personal Financial Management) requires the debtor to provide proof of completing the personal financial management course and to indicate any applicable exception to the requirement to complete the course.

**Official Form 24** (Certification to Court of Appeals by All Parties) conforms to amended Rule 8001, which 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 the form.

**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]) establish a form of reorganization plan and a form of disclosure statement, which may be used in small-business cases under chapter 11. The forms are samples and need not be used.

**Official Form 25C** (Small Business Monthly Operating Report) is a new form that assists small-business debtors in chapter 11 cases fulfill their financial reporting responsibilities under the Act.

**Official Form 26** (Periodic Report Concerning Related Entities) is a new form mandated by proposed new Rule 2015.3, requiring periodic reports on the profitability of any entities in which a chapter 11 debtor holds a substantial or controlling interest.

## **II. Proposed Amendments to the Federal Rules of Criminal Procedure:**

Under amended **Rule 29** (Motion for a Judgment of Acquittal), a judge is permitted to enter a judgment of acquittal before a verdict only if the defendant waives Double Jeopardy rights so that the government’s ability to appeal is preserved.

The amendment to **Rule 41** (Search and Seizure) authorizes a magistrate judge in a district in which activities related to a crime may have occurred to issue a search warrant for property located outside any state or federal judicial district but within a U.S. territory, possession or commonwealth or within certain premises associated with U.S. diplomatic and consular missions.

The following proposed amendments implement the Crime Victims’ Rights Act (CVRA), codified as 18 U.S.C. § 3771.

**Rule 1** (Scope; Definitions) incorporates the definition of “crime victim” from the CVRA; specifies the legal representative who may act on behalf of victims who are under the age of 18, incompetent, or deceased; and clarifies that a person accused of an offense cannot be a “victim” of that offense under the rules.

**Rule 12.1** (Notice of Alibi Defense) 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 fashion an alternative remedy.

**Rule 17** (Subpoena) requires court approval when a third party is subpoenaed to provide personal or confidential information about a victim. The court may also require that notice of the subpoena be given to the victim.

**Rule 18** (Place of Trial) requires the court to consider the convenience of victims as well as defendants and witnesses when setting the place for trial.

**Rule 32** (Sentencing and Judgment) deletes the definitions of “victim” and “crime of violence or sexual abuse” because new statutory definitions, incorporated in the amendment to Rule 1, supersede the provisions deleted; implements the victim’s statutory right to “full and timely restitution as provided by law”; clarifies that the victim impact information should be treated in the same way as other information contained in the presentence report; and incorporates statutory language that makes clear a victim has the right to be “reasonably heard” in judicial proceedings regarding sentencing.

**Rule 60** (Victim’s Rights) is a new rule that includes provisions giving a victim “reasonable, accurate, and timely” notice of any public court proceeding; states that a victim must not be excluded from any public court proceedings unless the court finds by clear and convincing evidence that the victim’s testimony would be materially altered by attending the proceeding; preserves the victim’s right to be heard; and enforces the victim’s rights. The new rule also clarifies that failure to provide relief under the rule is never a basis for a new trial.

**Rule 61** (Title) is a technical amendment.

### **III. Proposed Amendment to the Federal Rules of Evidence:**

**Rule 502** (Attorney-Client Privilege and Work Product; Limitations on Waiver) is intended to reduce the risk of forfeiting the attorney-client privilege or work-product protection so that parties need not scrutinize production of documents to the same extent as they now do. Under the new rule, the inadvertent disclosure of privileged or protected information would not effect a waiver if reasonable steps were taken to prevent the disclosure, and retrieval of the information is promptly demanded. Also, the disclosure of privileged or protected information would not waive the privilege or protection accorded other information concerning the same subject matter, unless fairness so requires. Furthermore, a confidentiality order entered by the court would bind all nonparties in any federal or state court. The advisory committee is especially interested in receiving comment on a possible provision governing selective waiver, which would prevent a general waiver of the privilege or protection for information disclosed to a law enforcement or regulatory agency in the course of an investigation.

*Public hearings are scheduled to be held on the amendments to*

- Bankruptcy Rules in Washington, D.C., on January 22, 2007;
- Criminal Rules in Washington, D.C., on January 26, 2007, and in San Francisco, California, on February 2, 2007; and
- Evidence Rules in Phoenix, Arizona, on January 12, 2007, and in New York, New York, on January 29, 2007.

**Those wishing to testify should contact the Secretary at the address below in writing at least 30 days before the hearing.**

All written comments on the proposed rule amendments should be mailed to:

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

**Comments on the proposed rule amendments may also be sent electronically to <Rules\_Comments@ao.uscourts.gov>.**

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

**The text of the proposed rule amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Home Page at <[www.uscourts.gov/rules](http://www.uscourts.gov/rules)>. For further information, copies of this brochure, the *Request for Comment* pamphlets, and other materials, contact:**

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