

# PRELIMINARY DRAFT OF

## Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, and Criminal Procedure, and the Federal Rules of Evidence

### Request for Comment

Comments are sought on Amendments to:

Appellate Rule 6

Bankruptcy Rules 1014, 7004, 7008, 7012, 7016, 7054, 8001-8028, 9023, 9024, 9027, and 9033, and Official Forms 3A, 3B, 6I, 6J, 22A-1, 22A-2, 22B, 22C-1, and 22C-2

Criminal Rules 5 and 58

Evidence Rules 801 and 803

All Written Comments are Due by  
February 15, 2013



THE UNITED STATES COURTS

Prepared by the  
Committee on Rules of Practice and Procedure of the Judicial  
Conference of the United States

AUGUST 2012

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

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EVIDENCE RULES

MEMORANDUM

**TO:** THE BENCH, BAR, AND PUBLIC

**FROM:** Honorable Mark R. Kravitz, Chair   
Committee on Rules of Practice and Procedure

**DATE:** August 15, 2012

**RE:** Request for Comments on Proposed Rules and Forms Amendments

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The Judicial Conference of the United States' Advisory Committees on Appellate, Bankruptcy, Criminal, and Evidence Rules have proposed amendments to their respective rules and forms, and requested that the proposals be circulated to the bench, bar, and public for comment. The proposed amendments, rules committee reports explaining the proposed changes, and other information are attached and also posted on the Judiciary's website at <http://www.uscourts.gov/rulesandpolicies/rules.aspx>.

**Opportunity for Public Comment**

All comments on these proposed amendments will be carefully considered by the rules committees, which are composed of experienced trial and appellate lawyers, judges, and scholars. Please provide any comments on the proposed amendments, whether favorable, adverse, or otherwise, as soon as possible but **no later than February 15, 2013**. All comments concerning the proposed amendments may be submitted electronically to [rules\\_comments@ao.uscourts.gov](mailto:rules_comments@ao.uscourts.gov) or in hard copy to the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Suite 7-240, Washington, D.C., 20544. All comments are made part of the official record and are available to the public.

Members of the public who wish to present testimony may appear at public hearings on these proposals. The Advisory Committees on the Appellate, Bankruptcy, Criminal, and Evidence Rules will hold hearings on the proposed amendments on the following dates:

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- Appellate Rules in Chicago, Illinois, on January 18, 2013, and in Washington, D.C., on February 1, 2013;
- Bankruptcy Rules and Official Forms in Chicago, Illinois, on January 18, 2013, and in Washington, D.C., on February 1, 2013;
- Criminal Rules in Boston, Massachusetts, on January 4, 2013, and in Washington, D.C., on January 28, 2013; and
- Evidence Rules in Boston, Massachusetts, on January 4, 2013, and in Washington, D.C., on January 22, 2013.

If you wish to testify, you must notify the Committee at the above addresses **at least 30 days before the hearing**.

After the public comment period, the Advisory Committees will decide whether to submit the proposed amendments to the Committee on Rules of Practice and Procedure. At this time, the Committee on Rules of Practice and Procedure has not approved these proposed amendments, except to authorize their publication for comment. The proposed amendments have not been submitted to or considered by the Judicial Conference or the Supreme Court.

The proposed amendments would become effective on December 1, 2014, if they are approved, with or without revision, by the relevant advisory committee, the Committee on Rules of Practice and Procedure, the Judicial Conference, and the Supreme Court, and if Congress does not act to defer, modify, or reject them. The revisions to the Official Bankruptcy Forms would become effective on December 1, 2013, if they are approved by the rules committees and the Judicial Conference.

If you have questions about the rulemaking process or pending rules amendments please contact Jonathan C. Rose, Chief, Rules Committee Support Office, or Benjamin J. Robinson, Counsel, Committees on Rules of Practice and Procedure, at 202-502-1820 or visit <http://www.uscourts.gov/rulesandpolicies/rules.aspx>.

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SIDNEY A. FITZWATER  
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**MEMORANDUM**

**DATE:** May 8, 2012

**TO:** Judge Mark R. Kravitz, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Judge Jeffrey S. Sutton, Chair  
Advisory Committee on Appellate Rules

**RE:** Report of Advisory Committee on Appellate Rules

**I. Introduction**

The Advisory Committee on Appellate Rules met on April 12, 2012, in Washington, DC. The Committee gave final approval to proposed amendments to Appellate Rules 13, 14, 24, 28, and 28.1 and to Form 4. The Committee approved for publication proposed amendments to Appellate Rule 6.

\* \* \* \* \*

Part III of this Report discusses the proposed amendments to Rule 6 (concerning bankruptcy appeals), which the Committee seeks approval to publish for comment.

\* \* \* \* \*



### **III. Action item for publication (proposed amendments to Rule 6)**

As discussed in the report of the Bankruptcy Rules Committee, that Committee is seeking approval to publish for comment proposed amendments to Part VIII of the Bankruptcy Rules – the rules that govern appeals from bankruptcy court to a district court or bankruptcy appellate panel (“BAP”). In tandem with that project, the Appellate Rules Committee seeks permission to publish for comment proposed amendments to Appellate Rule 6 (concerning appeals to the court of appeals in a bankruptcy case).

The proposed amendments to Appellate Rule 6 (which are set out in the enclosure to this report) would update that Rule’s cross-references to the Bankruptcy Part VIII Rules; would amend Rule 6(b)(2)(A)(ii) to remove an ambiguity dating from the 1998 restyling; would add a new Rule 6(c) to address permissive direct appeals from the bankruptcy court under 28 U.S.C. § 158(d)(2); and would revise Rule 6 to take account of the range of methods available now or in the future for dealing with the record on appeal.

The Appellate Rules do not currently address in explicit terms the topic of permissive direct appeals from a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2). At the time that Section 158(d)(2) came into being as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), the Appellate Rules Committee decided that no immediate action was necessary with respect to the Appellate Rules, because BAPCPA put in place interim procedures for administering the new direct appeals mechanism. Some of those interim procedures were subsequently displaced by the 2008 addition of subdivision (f) in Bankruptcy Rule 8001. The Committee now considers it worthwhile to specify in more detail the way in which the Appellate Rules apply to direct appeals under Section 158(d)(2), and the Bankruptcy Rules Committee’s Part VIII project provides an opportune context in which to obtain input and guidance on this question.

Proposed Appellate Rule 6(c) would treat the record on direct appeals differently than existing Rule 6(b) treats the record on bankruptcy appeals from a district court or BAP. Rule 6(b) contains a streamlined procedure for redesignating and forwarding the record on appeal, because in the appeals covered by Rule 6(b) the appellate record will already have been compiled for purposes of the appeal to the district court or the BAP. In the context of a direct appeal, the record will generally require compilation from scratch. The closest model for the compilation and transmission of the bankruptcy court record would appear to be the rules chosen by the Part VIII project for appeals from the bankruptcy court to the district court or the BAP. Thus, proposed Rule 6(c) incorporates the relevant Part VIII rules by reference while making some adjustments to account for the particularities of direct appeals to the court of appeals.

Both the Bankruptcy Rules Part VIII project and the project to revise Appellate Rule 6 have highlighted changes in the treatment of the record. The Appellate Rules as they currently exist were drafted on the assumption that the record on appeal would be available only in paper

Report to the Standing Committee  
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form. Reflecting the fact that the bankruptcy courts are ahead of other federal courts in making the transition to electronic filing, the proposed Part VIII Rules are drafted with a contrary presumption in mind: The default principle under those Rules is that the record will be made available in electronic form. In revising Rule 6(b) and in drafting new Rule 6(c), the Appellate Rules Committee's goal is to adopt language that can accommodate the various ways in which the lower-court record could be made available to the court of appeals – e.g., in paper form; or in electronic files that can be sent to the court of appeals; or by means of electronic links. Adopting such language seems generally advisable in the light of the shift to electronic filing; and such language seems particularly salient in the case of proposed Rule 6(c) because that Rule will incorporate by reference the Part VIII Rules that deal with the record on appeal.

The Committee considered a number of possible ways to allude to the provision of the record on appeal by the lower court to the court of appeals. Those deliberations are described in the draft minutes of the Committee's spring 2012 meeting. The Committee determined that neither "transmit" nor "furnish" nor "provide" captured the range of methods for making the record available; in particular, none of these terms encompassed the provision of a set of electronic links by which to access the documents in the record. After extensive discussions, the Committee decided to refer to the lower-court clerk's "making the record available to" the court of appeals. This language describes the action in question with the requisite clarity while also leaving room for developments in technology and practice. The Committee welcomes the Standing Committee's thoughts on this choice, as well as the reactions of the Bankruptcy Rules Committee and of the Subcommittee, chaired by Judge Gorsuch, that has been formed to consider this and similar questions of terminology relating to electronic filing.

One other linguistic question bears mention. As noted above, the proposed amendments would revise Rule 6(b)(2)(A)(ii) to remove an ambiguity arising from the 1998 restyling of the Appellate Rules. Specifically, for reasons explained at further length in the Committee Note, the proposed amendment would remove Rule 6(b)(2)(A)(ii)'s reference to challenging "an altered or amended judgment, order, or decree"; the amended Rule would refer instead to challenging "the alteration or amendment of a judgment, order, or decree." The amended Rule would state:

If a party intends to challenge the order disposing of [a tolling] motion – or the alteration or amendment of a judgment, order, or decree upon the motion – then the party, in compliance with Rules 3(c) and 6(b)(1)(B), must file a notice of appeal or amended notice of appeal. The notice or amended notice must be filed within the time prescribed by Rule 4 – excluding Rules 4(a)(4) and 4(b) – measured from the entry of the order disposing of the motion.

Professor Kimble advised the Committee that, in the second sentence, "It" should replace "The notice or amended notice." The Committee carefully discussed Professor Kimble's advice during both its fall 2011 and spring 2012 meetings, and decided not to adopt this suggestion. Committee members believe that the longer phrase is clearer; that clarity and specificity are particularly key for rules that govern the taking of an appeal; and that this is especially true in

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the context of bankruptcy appeals given that so many debtors are pro se. These concerns over access to court for unrepresented debtors led the Committee to conclude that this question is one of substance rather than style.

\* \* \* \* \*

**Rule 6. Appeal in a Bankruptcy Case From a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel**

1           **(a) Appeal From a Judgment, Order, or Decree of a**  
2           **District Court Exercising Original Jurisdiction in a**  
3           **Bankruptcy Case.** An appeal to a court of appeals from a  
4           final judgment, order, or decree of a district court exercising  
5           jurisdiction under 28 U.S.C. § 1334 is taken as any other civil  
6           appeal under these rules.

7           **(b) Appeal From a Judgment, Order, or Decree of a**  
8           **District Court or Bankruptcy Appellate Panel Exercising**  
9           **Appellate Jurisdiction in a Bankruptcy Case.**

10           **(1) Applicability of Other Rules.** These rules  
11           apply to an appeal to a court of appeals under 28 U.S.C.  
12           § 158(d)(1) from a final judgment, order, or decree of a  
13           district court or bankruptcy appellate panel exercising  
14           appellate jurisdiction under 28 U.S.C. § 158(a) or (b):  
15           But there are 3 exceptions, but with these qualifications:

16                   (A) Rules 4(a)(4), 4(b), 9, 10, 11, ~~12(b)~~ 12(c),  
17                   13-20, 22-23, and 24(b) do not apply;

18                   (B) the reference in Rule 3(c) to “Form 1 in  
19                   the Appendix of Forms” must be read as a  
20                   reference to Form 5; and

21 (C) when the appeal is from a bankruptcy  
22 appellate panel, ~~the term~~ “district court,” as used in  
23 any applicable rule, means “appellate panel:”; and

24 (D) in Rule 12.1, “district court” includes a  
25 bankruptcy court or bankruptcy appellate panel.

26 **(2) Additional Rules.** In addition to the rules made  
27 applicable by Rule 6(b)(1), the following rules apply:

28 **(A) Motion for rRehearing.**

29 (i) If a timely motion for rehearing  
30 under Bankruptcy Rule ~~8015~~ 8022 is filed,  
31 the time to appeal for all parties runs from the  
32 entry of the order disposing of the motion. A  
33 notice of appeal filed after the district court  
34 or bankruptcy appellate panel announces or  
35 enters a judgment, order, or decree – but  
36 before disposition of the motion for rehearing  
37 – becomes effective when the order disposing  
38 of the motion for rehearing is entered.

39 (ii) ~~Appellate review of~~ If a party  
40 intends to challenge the order disposing of  
41 the motion – or the alteration or amendment  
42 of a judgment, order, or decree upon the

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43 ~~motion – then requires~~ the party, in  
44 compliance with Rules 3(c) and 6(b)(1)(B),  
45 ~~to amend a previously filed notice of appeal.~~  
46 ~~A party intending to challenge an altered or~~  
47 ~~amended judgment, order, or decree must file~~  
48 a notice of appeal or amended notice of  
49 appeal. The notice or amended notice must  
50 be filed within the time prescribed by Rule 4  
51 – excluding Rules 4(a)(4) and 4(b) –  
52 measured from the entry of the order  
53 disposing of the motion.

54 (iii) No additional fee is required to file  
55 an amended notice.

56 **(B) The rRecord on aAppel.**

57 (i) Within 14 days after filing the notice  
58 of appeal, the appellant must file with the  
59 clerk possessing the record assembled in  
60 accordance with Bankruptcy Rule ~~8006~~ 8009  
61 – and serve on the appellee – a statement of  
62 the issues to be presented on appeal and a  
63 designation of the record to be certified and  
64 ~~sent~~ made available to the circuit clerk.

65 (ii) An appellee who believes that other  
 66 parts of the record are necessary must, within  
 67 14 days after being served with the  
 68 appellant's designation, file with the clerk  
 69 and serve on the appellant a designation of  
 70 additional parts to be included.

71 (iii) The record on appeal consists of:  
 72 • the redesignated record as provided  
 73 above;  
 74 • the proceedings in the district court or  
 75 bankruptcy appellate panel; and  
 76 • a certified copy of the docket entries  
 77 prepared by the clerk under Rule 3(d).

78 (C) **Forwarding Making the rRecord**  
 79 **Available.**

80 (i) When the record is complete, the  
 81 district clerk or bankruptcy\_appellate\_panel  
 82 clerk must number the documents  
 83 constituting the record and ~~send~~ promptly  
 84 make it available ~~them promptly to the circuit~~  
 85 ~~clerk together with a list of the documents~~  
 86 ~~correspondingly numbered and reasonably~~

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87 ~~identified to the circuit clerk. Unless directed~~  
88 ~~to do so by a party or the circuit clerk~~ If the  
89 clerk makes the record available in paper  
90 form, the clerk will not send ~~to the court of~~  
91 ~~appeals~~ documents of unusual bulk or weight,  
92 physical exhibits other than documents, or  
93 other parts of the record designated for  
94 omission by local rule of the court of appeals,  
95 unless directed to do so by a party or the  
96 circuit clerk. If ~~the exhibits are~~ unusually  
97 bulky or heavy exhibits are to be made  
98 available in paper form, a party must arrange  
99 with the clerks in advance for their  
100 transportation and receipt.

101 (ii) All parties must do whatever else is  
102 necessary to enable the clerk to assemble the  
103 record and ~~forward the record~~ make it  
104 available. When the record is made available  
105 in paper form, ~~t~~The court of appeals may  
106 provide by rule or order that a certified copy  
107 of the docket entries be ~~sent~~ made  
108 available in place of the redesignated record;



109                    b. But any party may request at any time  
 110                    during the pendency of the appeal that the  
 111                    redesignated record be ~~sent~~ made available.

112                    **(D) Filing the rRecord.** ~~Upon receiving the~~  
 113                    ~~record – or a certified copy of the docket entries~~  
 114                    ~~sent in place of the redesignated record – the~~  
 115                    ~~circuit clerk must file it and immediately notify all~~  
 116                    ~~parties of the filing date~~ When the district clerk or  
 117                    bankruptcy-appellate-panel clerk has made the  
 118                    record available, the circuit clerk must note that  
 119                    fact on the docket. The date noted on the docket  
 120                    serves as the filing date of the record. The circuit  
 121                    clerk must immediately notify all parties of the  
 122                    filing date.

123                    **(c) Direct Review by Permission Under 28 U.S.C. §**  
 124                    **158(d)(2).**

125                    **(1) Applicability of Other Rules.** These rules  
 126                    apply to a direct appeal by permission under 28 U.S.C.  
 127                    § 158(d)(2), but with these qualifications:

128                    (A) Rules 3-4, 5(a)(3), 6(a), 6(b), 8(a), 8(c),  
 129                    9-12, 13-20, 22-23, and 24(b) do not apply;

130 (B) as used in any applicable rule, “district  
131 court” or “district clerk” includes – to the extent  
132 appropriate – a bankruptcy court or bankruptcy  
133 appellate panel or its clerk; and

134 (C) the reference to “Rules 11 and 12(c)” in  
135 Rule 5(d)(3) must be read as a reference to Rules  
136 6(c)(2)(B) and (C).

137 **(2) Additional Rules.** In addition, the following  
138 rules apply:

139 **(A) The Record on Appeal.** Bankruptcy  
140 Rule 8009 governs the record on appeal.

141 **(B) Making the Record Available.**  
142 Bankruptcy Rule 8010 governs completing the  
143 record and making it available.

144 **(C) Stays Pending Appeal.** Bankruptcy  
145 Rule 8007 applies to stays pending appeal.

146 **(D) Duties of the Circuit Clerk.** When the  
147 bankruptcy clerk has made the record available,  
148 the circuit clerk must note that fact on the docket.  
149 The date noted on the docket serves as the filing  
150 date of the record. The circuit clerk must  
151 immediately notify all parties of the filing date.

152 **(E) Filing a Representation Statement.**  
 153 Unless the court of appeals designates another  
 154 time, within 14 days after entry of the order  
 155 granting permission to appeal, the attorney who  
 156 sought permission must file a statement with the  
 157 circuit clerk naming the parties that the attorney  
 158 represents on appeal.

**Committee Note**

**Subdivision (b)(1).** Subdivision (b)(1) is updated to reflect the renumbering of 28 U.S.C. § 158(d) as 28 U.S.C. § 158(d)(1). Subdivision (b)(1)(A) is updated to reflect the renumbering of Rule 12(b) as Rule 12(c). New subdivision (b)(1)(D) provides that references in Rule 12.1 to the “district court” include – as appropriate – a bankruptcy court or bankruptcy appellate panel.

**Subdivision (b)(2).** Subdivision (b)(2)(A)(i) is amended to refer to Bankruptcy Rule 8022 (in accordance with the renumbering of Part VIII of the Bankruptcy Rules).

Subdivision (b)(2)(A)(ii) is amended to address problems that stemmed from the adoption — during the 1998 restyling project — of language referring to challenges to “an altered or amended judgment, order, or decree.” Current Rule 6(b)(2)(A)(ii) states that “[a] party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal ....” Before the 1998 restyling, the comparable subdivision of Rule 6 instead read “[a] party intending to challenge an alteration or amendment of the judgment, order, or decree shall file an amended notice of appeal ....” The 1998 restyling made a similar change in Rule 4(a)(4). One court has explained that the 1998 amendment introduced ambiguity into that Rule: “The new formulation could be read to expand the obligation to file an amended notice to circumstances where the ruling on the post-trial motion alters the prior judgment in an insignificant manner or in a manner favorable to the appellant, even though the appeal is not directed against the

alteration of the judgment.” *Sorensen v. City of New York*, 413 F.3d 292, 296 n.2 (2d Cir. 2005). Though the *Sorensen* court was writing of Rule 4(a)(4), a similar concern arises with respect to Rule 6(b)(2)(A)(ii). Rule 4(a)(4) was amended in 2009 to remove the ambiguity identified by the *Sorensen* court. The current amendment follows suit by removing Rule 6(b)(2)(A)(ii)’s reference to challenging “an altered or amended judgment, order, or decree,” and referring instead to challenging “the alteration or amendment of a judgment, order, or decree.”

Subdivision (b)(2)(B)(i) is amended to refer to Rule 8009 (in accordance with the renumbering of Part VIII of the Bankruptcy Rules).

Due to the shift to electronic filing, in some appeals the record will no longer be transmitted in paper form. Subdivisions (b)(2)(B)(i), (b)(2)(C), and (b)(2)(D) are amended to reflect the fact that the record sometimes will be made available electronically.

Subdivision (b)(2)(D) sets the duties of the circuit clerk when the record has been made available. Because the record may be made available in electronic form, subdivision (b)(2)(D) does not direct the clerk to “file” the record. Rather, it directs the clerk to note on the docket the date when the record was made available and to notify the parties of that date, which shall serve as the date of filing the record for purposes of provisions in these Rules that calculate time from that filing date.

**Subdivision (c).** New subdivision (c) is added to govern permissive direct appeals from the bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2). For further provisions governing such direct appeals, see Bankruptcy Rule 8006.

**Subdivision (c)(1).** Subdivision (c)(1) provides for the general applicability of the Federal Rules of Appellate Procedure, with specified exceptions, to appeals covered by subdivision (c) and makes necessary word adjustments.

**Subdivision (c)(2).** Subdivision (c)(2)(A) provides that the record on appeal is governed by Bankruptcy Rule 8009. Subdivision (c)(2)(B) provides that the record shall be made available as stated in Bankruptcy Rule 8010. Subdivision (c)(2)(C) provides that Bankruptcy Rule 8007 applies to stays pending appeal; in addition,

Appellate Rule 8(b) applies to sureties on bonds provided in connection with stays pending appeal.

Subdivision (c)(2)(D), like subdivision (b)(2)(D), directs the clerk to note on the docket the date when the record was made available and to notify the parties of that date, which shall serve as the date of filing the record for purposes of provisions in these Rules that calculate time from that filing date.

Subdivision (c)(2)(E) is modeled on Rule 12(b), with appropriate adjustments.

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

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**MEMORANDUM**

**TO:** Honorable Mark R. Kravitz, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Honorable Eugene R. Wedoff, Chair  
Advisory Committee on Bankruptcy Rules

**DATE:** December 12, 2011

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

**I. Introduction**

The Advisory Committee on Bankruptcy Rules met on September 26 and 27, 2011, at Northwestern University School of Law in Chicago.

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The Committee brings to the Standing Committee one action item from the September meeting. As discussed in Part II of this report, the Committee considered and voted to recommend publishing for comment proposed amendments to Rules 7054 and 7008(b). These amendments are intended to clarify the procedure for seeking an award of attorney's fees in adversary proceedings.

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## II. Action Item—Rules 7054 and 7008(b)

**The Committee unanimously recommends that amendments to Rules 7054 and 7008(a) be published for comment.** Rule 7054 would be amended to make applicable in adversary proceedings most of the provisions regarding attorney’s fees in Civil Rule 54(d)(2). Rule 7008(b), which requires pleading a claim for attorney’s fees in the complaint or other appropriate pleading, would be deleted. The two rules, with the proposed amendments indicated, are set out in Appendix A.

In March 2011 the Ninth Circuit Bankruptcy Appellate Panel issued an opinion in which it “suggest[ed] that the Judicial Conference’s Advisory Committee on Bankruptcy Rules may want to address th[e] apparent ‘gap’ in Rule 7054.” *Charlie Y., Inc. v. Carey (In re Carey)*, 446 B.R. 384, 389 n.3 (2011). The gap to which the court referred is the absence of a provision in Rule 7054 concerning the procedure for obtaining an allowance of attorney’s fees in adversary proceedings. Although Rule 7054(a) incorporates Civil Rule 54(a)-(c), it has its own provision – subdivision (b) – governing the recovery of costs by a prevailing party, and it does not have a provision that parallels Rule 54(d)(2), which governs the recovery of attorney’s fees.

The reason that Bankruptcy Rule 7054 originally incorporated Civil Rule 54(a)-(c), but not (d), was that Rule 54(d) provided that “costs *shall be awarded as of course* to the prevailing party unless the court otherwise directs” (emphasis added). The Bankruptcy Rules Committee concluded that costs should not be routinely awarded to the prevailing party against a bankruptcy estate since the impact of the award would be borne by creditors.<sup>1</sup> Rule 7054(b), which was adopted instead of Rule 54(d), provides that “[t]he court *may allow costs* to the prevailing party except when a statute of the United States or these rules otherwise applies” (emphasis added).

The 1993 amendment to Rule 54(d) substantially expanded the subdivision to expressly address attorney’s fees as well as costs. The existing provision was renumbered (d)(1) and was re-titled “Costs Other Than Attorney’s Fees.” Paragraph (2), titled “Attorney’s Fees,” was added, and it requires a “claim for attorney’s fees and related nontaxable expenses . . . [to] be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.” Fed. R. Civ. P. 54(d)(2)(A). The rule governs the timing (“no later than 14 days after the entry of judgment”) and content of the motion and the conduct of the proceedings in response to the motion, incorporating Rule 78, dealing with motion practice. It also authorizes local rules to adopt special procedures for resolving fee issues without extensive evidentiary hearings, and it permits the referral of fee issues to special masters and magistrate judges. The provision is not applicable to fees awarded as sanctions under the rules or under 28 U.S.C. § 1927.

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<sup>1</sup> See Laura B. Bartell, *Award of Costs in Bankruptcy Courts*, 17 J. BANKR. L. & PRAC. 6 (Sept. 2008) (quoting Advisory Committee Note to Bankruptcy Rule 754, the predecessor of Rule 7054).

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Rule 7054 was never amended to incorporate any of the provisions of Rule 54(d)(2) or to otherwise address the procedure for claiming attorney's fees. Attorney's fees are addressed instead by Rule 7008(b). That provision, which has no counterpart in Civil Rule 8, provides that "[a] request for an award of attorney's fees shall be pleaded as a claim in a complaint, cross-claim, third-party complaint, answer, or reply as may be appropriate."

Under existing Rules 7054 and 7008(b), there is a lack of uniformity in how bankruptcy courts handle awards of attorney's fees. The Central District of California, for example, has a local bankruptcy rule governing the taxation of costs and the award of attorney's fees. It generally requires filing a motion for attorney's fees within 30 days after the entry of judgment or other final order "[i]f not previously determined at trial or other hearing." Thus by local rule that district has adopted a bankruptcy rule similar to Civil Rule 54(d)(2)(A).<sup>2</sup> A recent decision of the Bankruptcy Court for the Southern District of New York, however, discussed the general inapplicability of Rule 54(d)(2) in bankruptcy proceedings, with the possible exception of class actions. *In re Partsearch Techs., Inc.*, 2011 WL 2456227 (Bankr. S.D.N.Y. June 21, 2011), at \*13.<sup>3</sup> Yet another court concluded that an award of attorney's fees in bankruptcy is generally governed by Rule 7008(b), but held in that case that, because the applicable Virgin Islands law defined attorney's fees as "costs," Rule 7054(b) applied. *In re Kool, Mann, Coffee & Co.*, 2007 WL 1202888 (Bank. D.V.I. 2007). Finally, the Ninth Circuit BAP, in the *Carey* decision that led to the Committee's consideration of this issue, recognized that Rule 7008(b) requires the pleading of a claim for attorney's fees, but the court said that the rule "does not shed any light on whether such a claim must be proven at trial or left for determination on application or motion following the trial." Because there was no local bankruptcy rule that governed the procedure for pursuing an attorney's fees claim beyond the pleading stage, the court concluded that "no provision of the Rules proscribed the Appellant's request for an award of attorney's fees through the Fee Motion following the trial of the Adversary Proceeding." 446 B.R. at 390.

In order to clarify the procedure for seeking an award of attorney's fees and to promote uniformity, the Committee voted to propose amending Rule 7054 to include much of the substance of Civil Rule 54(d)(2) and to delete Rule 7008(b). By bringing the bankruptcy rules into closer alignment with the civil rules, this amendment would eliminate a potential trap for an attorney, particularly one familiar with the civil rules, who might overlook the Rule 7008(b) requirement to plead a request for attorney's fees as a claim in the complaint, answer, or other pleading. As under the civil rules, the procedure for seeking an award of attorney's fees would be governed exclusively by Rule 7054, unless the governing substantive law requires the fees to be proved at trial as an element of damages.

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<sup>2</sup> See also *In re Branford Partners*, 2008 WL 8444795, at \* 4 (9<sup>th</sup> Cir. BAP 2008) ("A post trial motion for costs is the 'preferred method' for seeking attorneys' fees and costs.").

<sup>3</sup> The court noted that Rule 7023 fully incorporates Civil Rule 23 and that Rule 23(h)(1) provides that a claim for an award of attorney's fees must be made by motion under Rule 54(d)(2). The court cited the Collier treatise as stating that "Rule 54(d)(2) is applicable in bankruptcy, but only with respect to class actions," but noted that another commentator questioned whether "Rule 23(h) can override the procedures set forth in Rule 7008(b)." 2011 WL 2456227 at \* 13.



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All of the provisions of Rule 54(d)(2), however, cannot be made applicable in bankruptcy proceedings. Subdivision (d)(2)(D) would not be incorporated in its entirety because bankruptcy courts may not refer matters to special masters, *see* Bankruptcy Rule 9031, or magistrate judges. *See* 28 U.S.C. § 636. The reference to Rule 78 in Civil Rule 54(d)(2)(C) would also not be incorporated because that rule is not applicable in bankruptcy proceedings.

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COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
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MEMORANDUM

**TO:** Honorable Mark R. Kravitz, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Honorable Eugene R. Wedoff, Chair  
Advisory Committee on Bankruptcy Rules

**DATE:** May 14, 2012

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

**I. Introduction**

The Advisory Committee on Bankruptcy Rules met on March 29 and 30, 2012, in Phoenix, Arizona.

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The Advisory Committee also took action at the spring meeting on proposed rule and form amendments that resulted from two long-term Committee projects: (1) revision of the bankruptcy appellate rules (Part VIII of the Rules of Bankruptcy Procedure) and (2) revision of all of the official bankruptcy forms (the Forms Modernization Project). The Committee requests publication for public comment of revised Part VIII and several modernized forms for use in individual-debtor bankruptcy cases.

Other matters considered by the Advisory Committee included suggestions for rule or form amendments that were submitted by members of the bench and bar, including rule amendments proposed in response to the Supreme Court's decision in *Stern v. Marshall*, 131 S.

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Ct. 2594 (2011). The Committee voted to recommend several rule and form amendments in response to these suggestions.

Part II of this report discusses the action items, which are grouped into three categories:

(a) matters published in August 2011 for which the Advisory Committee seeks approval for transmission to the Judicial Conference—amendments to Rules 1007(b), 5009(b), 9006, 9013, and 9014, and Official Form 7;

(b) matters for which the Advisory Committee seeks approval for transmission to the Judicial Conference without publication—technical or conforming amendments to Rule 4004(c) and Official Forms 9A - 9I, 10, and 21; and

(c) matters for which the Advisory Committee seeks approval for publication in August 2012—amendments to Rules 1014, 7004, 7008, 7012, 7016, 8001-8028, 9023, 9024, 9027, and 9033, and Official Forms 3A, 3B, 6I, 6J, 22A-1, 22A-2, 22B, 22C-1, and 22C-2.

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## **B. Items for Publication in August 2012**

**The Advisory Committee recommends that the proposed amendments that are summarized below be published for public comment.** The texts of the amended rules and official forms are set out in Appendix B.

**Action Item 7. Rule 1014(b)** would be amended to clarify the proper course of action when bankruptcy petitions involving the same or related debtors are filed in different districts. The current rule provides that, upon a motion, the court in which the first-filed petition is pending may determine—in the interest of justice or for the convenience of the parties—the district or districts in which the cases will proceed. Courts in the other districts must stay proceedings in later-filed cases until the first court makes its determination, unless that court orders otherwise. By default, the later cases are therefore stayed while the venue question is pending before the first court.

The Advisory Committee voted to seek publication of an amendment to Rule 1014(b) that alters this default requirement. The amendment provides that proceedings in subsequently filed cases are stayed only upon order of the court in which the first-filed petition is pending. This change is intended to prevent disruption of the other cases unless there is a judicial determination that a stay of a related case is needed while the first court makes its venue determination. The amendment will also clarify who should receive notice of the hearing on the venue motion by incorporating by reference the entities entitled to notice under Rule 2002(a). In addition, stylistic changes have been made to the rule.

**Action Item 8. Rule 7004(e)** would be amended to change the time in which a summons remains valid after it is issued. The amendment reduces that period from fourteen days to seven days. This change is intended to ensure that a defendant has sufficient time to respond to a

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complaint in bankruptcy litigation. The Civil Rules and Bankruptcy Rules use different methods to calculate a defendant's time to respond to a complaint. Under the Civil Rules, the defendant's time to respond begins when the summons and complaint are served. The Bankruptcy Rules, however, calculate the defendant's response time from the date the summons is issued. Although Rule 7012(a) of the Bankruptcy Rules gives a defendant (other than a United States officer or agency) thirty days to answer a complaint, a lengthy delay between issuance and service of the summons may unduly shorten the defendant's time to respond in a bankruptcy proceeding.

Concluding that a seven-day window of time is sufficient for service of the summons, the Advisory Committee voted unanimously to seek publication of an amendment to shorten the period of time in which a summons remains valid. The amendment is intended to encourage prompt service after issuance of a summons.

**Action Item 9. Rules 7008, 7012, 7016, 9027, and 9033** would be amended to respond to the Supreme Court's recent decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011). In *Stern*, the Court held that a non-Article III bankruptcy judge could not enter final judgment on a debtor's common law counterclaim brought against a creditor of the bankruptcy estate. Although the Judicial Code, 28 U.S.C. § 157(b), deemed the counterclaim a "core" proceeding that a bankruptcy judge could hear and determine, the Court found Congress's assignment of final adjudicatory authority to the bankruptcy judge in the proceeding to be unconstitutional.

The Bankruptcy Rules follow the Judicial Code's division between core and non-core proceedings. The current rules contemplate that a bankruptcy judge's adjudicatory authority is more limited in non-core proceedings than in core proceedings. For example, parties are required to state whether they do or do not consent to final adjudication by the bankruptcy judge in non-core proceedings. There is no comparable requirement for core proceedings. *Stern* has introduced the possibility, however, that a proceeding defined as core under the Judicial Code may nevertheless lie beyond the constitutional power of a bankruptcy judge to adjudicate finally. Accordingly, a proceeding could be "core" as a statutory matter but "non-core" as a constitutional matter.

The Advisory Committee voted unanimously to seek publication of amendments to the Bankruptcy Rules that address this concern. The proposed amendments will alter the Bankruptcy Rules in three respects. First, the terms core and non-core will be removed from Rules 7008, 7012, 9027, and 9033 to avoid possible confusion in light of *Stern*. Second, parties in all bankruptcy proceedings (including removed actions) will be required to state whether they do or do not consent to entry of final orders or judgment by the bankruptcy judge. Third, Rule 7016, which governs pretrial procedures, will be amended to direct bankruptcy courts to decide the proper treatment of proceedings.

These amendments are not intended to take a position on the question whether party consent is sufficient to permit a bankruptcy judge to enter final judgment in a proceeding that would otherwise lie beyond the judge's adjudicatory authority. Instead, the proposed changes to the Bankruptcy Rules are designed to frame the question of adjudicatory authority and allow the bankruptcy judge to determine the appropriate course of action. The court must decide whether to hear and finally adjudicate the proceeding, whether to hear it and issue proposed findings and conclusions, or whether to take some other action.

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**Action Item 10. Rules 8001-8028** (Part VIII of the Bankruptcy Rules) are the proposed revision of the bankruptcy appellate rules. They result from a multi-year project to bring the bankruptcy appellate rules into closer alignment with the Federal Rules of Appellate Procedure; to incorporate a presumption favoring the electronic transmission, filing, and service of court documents; and to adopt a clearer style. At the outset of the project, the Committee hosted two mini-conferences on the subject of the bankruptcy appellate rules. Judges, lawyers, court personnel, and academics who had substantial experience with bankruptcy appeals attended. Subsequent drafting, review, and refinement of the proposed rules received the benefit of input from the Appellate Rules Committee and its reporter, Professor Struve. The Committee also incorporated style suggestions of the Standing Committee's style consultant, Professor Kimble.

The Advisory Committee presented the first half of the Part VIII revision (Rule 8001-8012) to the Standing Committee at its January 2012 meeting for preliminary review. The Committee later made revisions to the draft in response to the Standing Committee's comments.

The Advisory Committee unanimously approved the entire draft of revised Part VIII at its spring meeting and approved some additional revisions by a later email vote. It now requests approval of the publication of revised Part VIII for public comment in August. The text of the proposed rules and their committee notes are set out in Appendix B.2.

As the Committee explained in January, the revision of Part VIII is comprehensive. Existing rules have been reorganized and renumbered, some rules have been combined, and provisions of other rules have been moved to new locations. Much of the language of the existing rules has been restyled. Because of the comprehensive nature of the proposed revision, it is not possible to present the amendments in a redlined version that points out changes to the existing rules. Nor can the proposed revision be presented in a comparative format like the one used for the restyled Evidence Rules.

This part of the report instead discusses substantive changes that were made to the first half of the Part VIII rules after the January meeting, and then, following the same approach as in the Committee's last report, it addresses individually the rules not previously presented to the Standing Committee (Rules 8013-8028). For each rule, the report notes significant changes from the existing Bankruptcy Rules and decisions to depart from the Appellate Rules.

Rule 8001 (Scope of the Part VIII Rules; Definition of "BAP"; Method of Transmission). In response to comments at the Standing Committee meeting, the Advisory Committee revised this rule to eliminate the definitions of "appellate court" and "transmit." Prior drafts of Part VIII used the term "appellate court" to mean only a district court or BAP. Some members of the Standing Committee pointed out that this narrow definition of "appellate court," which excludes courts of appeals, would be confusing to a reader who did not first consult Rule 8001. The proposed rules now refer to all courts by name: bankruptcy court, district court, BAP, and court of appeals. Because the term "appellate court" is no longer used, its definition in Rule 8001 was removed. Due to the repeated references to "district court or BAP," the acronym for bankruptcy appellate panel, well known by bankruptcy judges and lawyers, was retained, and its definition remains in this rule.

The Committee changed what had been a definition of "transmit" in this rule to a provision that directly addresses the method of transmitting documents. This change responds to

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the concern raised at the Standing Committee meeting about treating only in a definition the important presumption favoring filing, serving, and sending documents by electronic means. The title of this rule has also been revised to highlight the fact that it addresses the method of transmission. The presumption in favor of electronic transmission now includes an exception for pro se individuals.

Rule 8007 (Stay Pending Appeal; Bonds; Suspension of Proceedings). The Committee corrected the omission of a reference to the court of appeals in subdivision (c).

Rule 8010 (Completion and Transmission of the Record). The Committee made several changes to the draft of this rule after consulting with clerks of bankruptcy courts, the clerk of a BAP, and representatives of the Administrative Office of the U.S. Courts. These sources advised the Committee that court reporters should be required to file documents only in a bankruptcy court and that all duties associated with preparing and filing transcripts should be carried out by reporters and transcription services, not the clerk's office.

The proposed rule now clarifies that in courts that record proceedings without a reporter present in the courtroom, the term "reporter" includes the person or service designated by the court to transcribe the recording. Unlike FRAP 11, proposed Rule 8010 does not require the reporter to send anything to an appellate court. And in a change from current bankruptcy practice, the clerk of the appellate court will no longer docket the appeal when the complete record is received. Docketing will occur upon receipt of the notice of appeal (proposed Rules 8003(d) and 8004(c)). The appellate-court clerk will still provide notice to the parties of the date on which the transmission of the record was received, because under proposed Rule 8018(a) that date generally commences the briefing schedule.

Rule 8013 (Motions; Intervention). In a change from current bankruptcy practice, the proposed rule does not permit briefs to be filed in support of or in response to motions. Instead, like the practice under FRAP 27, legal arguments must be included in the motion or response.

Proposed subdivision (g) permits motions for intervention in a bankruptcy appeal pending in a district court or BAP. The current Part VIII rules do not address intervention, and the appellate rules provide for intervention only with respect to the review of agency decisions. Someone seeking to intervene in a bankruptcy appeal must explain whether intervention was sought in the bankruptcy court and why intervention is being sought at the appellate stage.

Rule 8014 (Briefs). Proposed subdivision (a)(6) regarding the statement of the case adopts the language of the proposed amendment of FRAP 28(a)(6) for which the Appellate Rules Committee is seeking final approval at this meeting. In a change from existing bankruptcy practice, proposed subdivision (a)(7) would require appellants' and appellees' briefs to contain a summary of the argument. This requirement is consistent with current FRAP 28(a)(8).

The proposed rule departs from the requirements of FRAP 28 by not including provisions regarding references to parties and references to the record. The Committee concluded that this level of detail in the bankruptcy appellate rules is unnecessary.

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Subdivision (f) adopts the provision of FRAP 28(j) regarding the submission of supplemental authorities. Unlike the FRAP provision, the proposed rule imposes a definite time limit (seven days) for any response, unless the court orders otherwise.

Rule 8015 (Form and Length of Briefs; Form of Appendices and Other Papers). The proposed rule is modeled on FRAP 32. The title was changed to call attention to the fact that this rule governs the length of briefs. Unlike FRAP 32(a)(2), subdivision (a)(2) of the proposed rule does not prescribe colors for brief covers.

Subdivision (a)(7) decreases the length of principal and reply briefs currently permitted by Rule 8010. This change imposes on briefs filed in a district court or BAP the same page limits that apply to briefs filed in a court of appeals.

Rule 8016 (Cross-Appeals). This provision is new to Part VIII. It is modeled on FRAP 28.1.

Rule 8017 (Brief of an Amicus Curiae). The current Part VIII rules do not provide for amicus briefs. The proposed rule is modeled on FRAP 29. Unlike FRAP 29(a), subdivision (a) of this rule permits the court to request amicus participation.

Rule 8018 (Serving and Filing Briefs; Appendices). The proposed rule continues the existing bankruptcy practice of allowing the appellee to file a separate appendix. It differs in this respect from FRAP 30, which requires the filing of a single appendix by all parties.

The time periods for the appellant and appellee to file their initial briefs are lengthened from 14 to 30 days. For the appellant, that period will still be shorter than the 40-day period prescribed by FRAP 31.

Rule 8019 (Oral Argument). Subdivision (a) alters existing Rule 8012 by (1) authorizing the court to require the parties to submit a statement about the need for oral argument and (2) permitting statements to explain why oral argument is not needed, rather than only why it should be allowed. The proposed rule tracks FRAP 34(a)(1).

Subdivision (f) differs from FRAP 34(e) by giving the court discretion, when the appellee fails to appear for oral argument, either to hear the appellant's argument or postpone argument.

Rule 8020 (Frivolous Appeal and Other Misconduct). Subdivision (a) of the proposed rule is derived from existing Rule 8020, which in turn is modeled on FRAP 38. Subdivision (b) is derived from FRAP 46(c). It expands the FRAP provision to apply to misconduct by parties as well as by attorneys.

Rule 8021 (Costs). FRAP 39 requires both the court of appeals and the district court to be involved in the taxing of costs. The court of appeals fixes maximum rates for producing copies of documents, and the clerk of the court of appeals prepares and certifies an itemized statement of costs for insertion in the mandate. Additional costs on appeal are taxable in the district court. The proposed rule, by contrast, is intended to continue the practice under current Rule 8014 of giving the bankruptcy clerk the entire responsibility for taxing the costs of appeal.

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Subdivision (b) adds a provision regarding the taxing of costs against the United States. This provision, which is not included in current Rule 8014, is derived from FRAP 39(b).

Rule 8022 (Motion for Rehearing). Subdivision (a)(1) retains the requirement of current Rule 8015 that in all cases parties must file a motion for rehearing within 14 days after the judgment is entered. It differs from FRAP 40(a)(1), which allows 45 days for filing the motion in a civil case if the United States is a party.

The provision in existing Rule 8015 that specifies when the time for appeal to the court of appeals begins to run is not retained because the matter is addressed by FRAP 6(b)(2).

Rule 8023 (Voluntary Dismissal). The provision of current Rule 8001(c)(1) for dismissal by the bankruptcy court prior to the docketing of the appeal has been omitted. Under the proposed rules, appeals would be docketed shortly after the notice of appeal is filed—a period likely to be especially short if the notice of appeal is transmitted electronically. The Committee therefore thought it unlikely that a voluntary dismissal of the appeal would be sought after the appellant filed the notice of appeal but before the appeal had been docketed. It noted, however, that FRAP 42 has a provision for dismissal by the district court prior to docketing, even though docketing under FRAP 12 also occurs upon receipt by the circuit clerk of the notice of appeal (and docket entries).

FRAP 42(b) provides that the circuit clerk “may” dismiss an appeal if the parties (1) file a signed dismissal agreement specifying how costs are to be paid and (2) pay any fees that are due. The proposed rule requires the clerk of the district court or BAP to dismiss under those circumstances. That requirement is consistent with current Rule 8001(c)(2).

Rule 8024 (Clerk’s Duties on Disposition of the Appeal). The only change from existing Rule 8016, other than stylistic ones, is the recognition that in some cases no original documents may have been transmitted to the appellate court.

Rule 8025 (Stay of District Court or BAP Judgment). The proposed rule is derived from current Rule 8017. Only subdivision (c) is new. It provides for the stay of a bankruptcy court’s order, judgment, or decree that is affirmed on appeal for the duration of any stay of the appellate judgment.

Rule 8026 (Rules by Circuit Councils and District Courts; Procedure When There Is No Controlling Law). The only changes from current Rule 8018 are stylistic.

Rule 8027 (Mediation). This rule is new and has no counterpart in the Appellate Rules. It provides that if a district court or BAP has a mediation procedure that is applicable to bankruptcy appeals, the clerk must advise the parties—promptly after the docketing of the appeal—that the procedure applies, what its requirements are, and how the procedure affects the time for filing briefs in the appeal.

Rule 8028 (Suspension of Rules in Part VIII). The proposed rule provides a more expansive list of rules that may not be suspended than either current Rule 8019 or FRAP 2.



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**Deletion of Current Rule 8013.** The proposed Part VIII rules do not include a rule similar to current Rule 8013 (Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact). The Committee concluded that no rule is needed to specify the actions that a district court or BAP may take (affirm, modify, reverse, or remand with instructions) in ruling on bankruptcy appeals. It further concluded that the remainder of the rule—prescribing the weight to be accorded the bankruptcy court's findings of fact—duplicates Rule 7052, which applies in adversary proceedings and is made applicable to contested matters by Rule 9014. The Appellate Rules do not contain a similar rule. The Committee's decision not to include in revised Part VIII a rule similar to current Rule 8013 is not intended to change existing law. It merely reflects a determination that the rule is unnecessary.

**Action Item 11. Rules 9023 and 9024** would be amended to refer to the procedure in proposed new Rule 8008 governing indicative rulings. Unlike the Civil and Appellate Rules, the Bankruptcy Rules would include a single rule prescribing the procedure for indicative rulings in both the bankruptcy and appellate courts. Proposed Rule 8008 would govern the issuance of indicative rulings by bankruptcy judges and the corresponding procedures applicable in district courts and bankruptcy appellate panels. In order to remind litigants who file postjudgment motions of the possibility of seeking an indicative ruling from a bankruptcy court that lacks jurisdiction to grant relief due to the pendency of an appeal, the Committee voted at its fall 2008 meeting to amend Rules 9023 and 9024 to add a cross-reference to Rule 8008. The Committee delayed seeking publication of these proposed amendments until the completion of the Part VIII revision project.

**Action Items 12-14. Initial revised forms for individual debtors.**

The nine forms proposed for publication in these action items are the initial products of the Forms Modernization Project or FMP, a multi-year endeavor of the Advisory Committee, working in conjunction with the Federal Judicial Center and the Administrative Office. The dual goals of the FMP are to improve the official bankruptcy forms and to improve the interface between the forms and available technology. The judiciary is in the process of developing "the next generation" of CM/ECF (NextGen), and the modernized forms are being designed to use enhanced technology that will become available through NextGen. From a forms perspective, the major change in NextGen will be the ability to store all information on forms as data so that authorized users can produce customized reports containing the information they want from the forms, displayed in whatever format they choose.

The FMP made a preliminary decision that the debtor forms for individuals and entities other than individuals should be separated. There is a greater need for the forms submitted by individuals to be less technical, because individuals are generally less sophisticated than other entities and because individuals may not have the assistance of counsel. Accordingly, the forms for individual debtors are designed to use language more common in ordinary conversation, to employ more intuitive layouts, and to include both clearer instructions, examples within the forms, and more extensive separate instruction sheets.

This approach in form drafting was followed in the new forms adopted in connection with proofs of claim for certain mortgages in chapter 13 cases—Official Forms 10 (Attachment A), 10 (Supplement 1), and 10 (Supplement 2)—that went into effect on December 1, 2011. The format of these new forms has generally been well accepted.

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The nine forms now being submitted for publication are among those that an individual debtor would file at the outset of a case.

Before adoption by the Advisory Committee, drafts of all of the individual debtor forms were circulated to organizations representing a range of users and to other reviewers. A concern expressed by some of the user groups was that the new format resulted in forms of greater length, creating additional difficulty in locating the information needed by the users. This problem would be addressed by allowing extraction of data from the forms, which could be reported in formats tailored to the users' needs, but the availability of such access depends in part on the timing of the development of NextGen, which is not certain.

Accordingly, the Advisory Committee has suggested an incremental approach. The nine forms now being proposed for publication—the fee waiver and installment fee forms, the income and expense forms, and the means test forms—reflect the FMP approach to form-drafting without imposing major changes in utility. These particular forms make no change in the substantive content and simply replace existing forms. They are not significantly longer than the forms they replace, they all involve the debtors' income and expenses, and they are employed by a range of users: the courts, U.S. Trustees, and case trustees, for varied purposes. Their publication and, if adopted, their use, will provide a useful gauge of the effectiveness of the FMP approach.

The text of the nine new forms is set out in Appendix B.3 to this report. The separate instructions for the forms are also included, even though the Advisory Committee does not anticipate requesting that the instructions be approved as Official Forms, and debtors are instructed not to file the instructions with the forms. The inclusion of the instructions with the published forms is to illustrate the manner in which the new forms will be presented to debtors. Setting out detailed instructions on a separate document will reduce the need for lengthy instructions in the forms themselves.

**Action Item 12. Official Forms 3A and 3B**

These forms both deal with payment of the filing fee for an individual's bankruptcy case, and replace current Official Forms 3A and 3B. Form 3A is the application for paying the filing fee installments; Form 3B is the application for waiver of the filing fee in a chapter 7 case. Because these forms are most frequently completed by unrepresented debtors, the Advisory Committee concluded that the additional clarity of the FMP approach may be of particular value here. The only changes in Form 3A are stylistic, consistent with the overall approach of the project.

Official Form 3B also includes three technical changes. First, Line 1 of the form asks the size of the debtor's family. Because the debtor's dependents are now proposed to be listed in revised Official Form 6J, rather than in Official Form 6I, as done presently, the reference to the number of dependents changed from Schedule I to Schedule J. Second, consistent with the Judicial Conference Interim Procedures For Waiver of Chapter 7 Fees, proposed Official Form 3B specifies that non-cash governmental assistance (such as food stamps or housing subsidies) should not be included in stating the debtor's income level for purposes of determining eligibility for a fee waiver, although it continues to be reported for purposes of determining the debtor's ability to pay the filing fee. Third, the declaration and signature section for a non-attorney

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bankruptcy petition preparer (BPP) has been removed as unnecessary. The same declaration, required under 11 U.S.C. § 110, is contained in Official Form 19. That form must be completed and signed by the BPP, and filed with each document for filing prepared by a BPP.

**Action Item 13. Official Forms 6I and 6J**

Official Forms 6I and 6J—usually referred to as Schedules I and J—set out the income and expenses of an individual debtor. In addition to the stylistic changes made as part of the Forms Modernization Project, the revised versions of the forms contain several changes intended to provide more accurate and useful information.

The revised forms address the situation of a debtor who lives with and pools assets with other people who are not related by blood or marriage to debtor. Schedule I now includes as income any contributions made by someone else to the expenses listed on Schedule J, and the debtor is instructed to include contributions from an unmarried partner, members of the debtor's household, dependents, roommates, and other friends or relatives.

Revised Schedule J now requests separate information on dependents who live with the debtor, dependents who live separately, and other members of the household.

In chapter 13 cases, revised Schedule J asks for expenses at two different points in time—the date the debtor files bankruptcy (Column A) and the date a proposed 13 plan is confirmed (Column B). This allows Schedule J to state what the debtor's expenses will be as a result of the confirmed plan, thus facilitating a determination of the plan's feasibility.

A new line 23 is added to Schedule J, setting out a calculation of the debtor's monthly net income.

**Action Item 14. Official Forms 22A-1, 22A-2, 22B, 22C-1, 22C-2**

These forms are used in determining a debtor's current monthly income under 11 U.S.C. § 110(10A), and—in chapter 7 and 13 cases—in determining income remaining after deduction of expenses specified in statutes governing those chapters. The forms for chapter 7 and 13 cases are generally referred to as the “means test” forms. In Official Form 22B, the statement of current monthly income in chapter 11 cases filed by individuals, the only changes are stylistic, conforming to the overall approach of the Forms Modernization Project. For chapters 7 and 13, however, the means test forms have been revised in several additional ways.

First, and most significantly, the means test forms have been divided into two separate forms: one for income (Official Form 22A-1 in chapter 7, Official Form 22C-1 in chapter 13), and the other for expenses (Official Form 22A-2 in chapter 7, Official Form 22C-2 in chapter 13). Because expense information is only required of debtors whose currently monthly income exceeds the applicable state median income, most debtors will not have to complete the expense forms, thereby reducing the volume of the filed forms.

Second, in both the chapter 7 and chapter 13 forms, the deduction for cell phone and internet expenses is modified to reflect more accurately the IRS allowances incorporated by the

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Bankruptcy Code. Under the applicable IRS “other necessary expense” standard, cell phone and other optional telecommunication services expenses are deductible not only if necessary for the health and welfare of the debtor and the debtor’s dependents, as stated in the current forms, but also if necessary for the production of income if not reimbursed by the debtor’s employer or deducted by the debtor in calculating net self-employment income. Revised Official Form 22A-2 (in line 23) and Official Form 22C-2 (in line 19) make this correction. On the other hand, unlike their counterparts in the current forms, these lines do not permit deduction of basic home internet expenses, because under IRS guidelines adopted in 2011, these expenses are included in the Local Standards for housing and utilities.

Third, line 60 of current Official Form 22C has not been repeated in Official Form 22C-2. Line 60 allows debtors to list, but not deduct from income, “Other Necessary Expense” items that are not included within the categories specified by the Internal Revenue Service. Because debtors are separately allowed to list—and deduct—any expenses arising from special circumstances, former Line 60 was rarely used.

Finally, Form 22C-2 also reflects the Supreme Court’s decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010). Adopting a forward-looking approach, the Court stated in *Lanning* that the calculation of a chapter 13 debtor’s projected disposable income under 11 U.S.C. § 1325(b) requires consideration of changes to income or expenses that, at the time of plan confirmation, have occurred or are virtually certain to occur. Such changes could result in either an increased or decreased projected disposable income. Because only debtors whose annualized current monthly income exceeds the applicable median family income have their projected disposable income determined by the information provided on Official Form 22C-2, only these debtors are required to provide the information about changes to income and expenses on Official Form 22C-2. Part 3 of Official Form 22C-2 provides for the reporting of those changes.

\* \* \* \* \*



20 filed cases not to proceed further ~~the proceedings on the other~~  
21 ~~petitions shall be stayed by the courts in which they have been~~  
22 ~~filed until it makes~~ the determination ~~is made~~.

### COMMITTEE NOTE

Subdivision (b) provides a practical solution for resolving venue issues when related cases are filed in different districts. It designates the court in which the first-filed petition is pending as the decision maker if a party seeks a determination of where the related cases should proceed. Subdivision (b) is amended to clarify when proceedings in the subsequently filed cases are stayed. It requires an order of the court in which the first-filed petition is pending to stay proceedings in the related cases. Requiring a court order to trigger the stay will prevent the disruption of other cases unless there is a judicial determination that this subdivision of the rule applies and that a stay of related cases is needed while the court makes its venue determination.

Notice of the hearing must be given to all debtors, trustees, creditors, indenture trustees, and United States trustees in the affected cases, as well as any other entity that the court directs. Because the clerk of the court that makes the determination often may lack access to the names and addresses of entities in other cases, a court may order the moving party to provide notice.

The other changes to subdivision (b) are stylistic.



**Rule 7008. General Rules of Pleading**

1           ~~(a) APPLICABILITY OF RULE 8 F.R.CIV.P.~~ Rule 8  
2           F.R.Civ.P. applies in adversary proceedings. The allegation of  
3           jurisdiction required by Rule 8(a) shall also contain a reference to  
4           the name, number, and chapter of the case under the Code to which  
5           the adversary proceeding relates and to the district and division  
6           where the case under the Code is pending. In an adversary  
7           proceeding before a bankruptcy ~~judge~~ court, the complaint,  
8           counterclaim, cross-claim, or third-party complaint shall contain a  
9           statement ~~that the proceeding is core or noncore and, if non-core~~  
10          that the pleader does or does not consent to entry of final orders or  
11          judgment by the bankruptcy ~~judge~~ court.

12           ~~(b) ATTORNEY'S FEES. A request for an award of~~  
13          attorney's fees shall be pleaded as a claim in a complaint, cross=  
14          claim, third-party complaint, answer, or reply as may be  
15          appropriate.

**COMMITTEE NOTE**

Former subdivision (a) is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to require in all proceedings that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. Rule 7012(b) has been amended to require a similar



statement in a responsive pleading. The bankruptcy judge will then determine the appropriate course of proceedings under Rule 7016.

The rule is also amended to delete subdivision (b), which required a request for attorney's fees always to be pleaded as a claim in an allowed pleading. That requirement, which differed from the practice under the Federal Rules of Civil Procedure, had the potential to serve as a trap for the unwary.

The procedures for seeking an award of attorney's fees are now set out in Rule 7054(b)(2), which makes applicable most of the provisions of Rule 54(d)(2) F.R. Civ. P. As specified by Rule 54(d)(2)(A) and (B) F.R. Civ. P., a claim for attorney's fees must be made by a motion filed no later than 14 days after entry of the judgment unless the governing substantive law requires those fees to be proved at trial as an element of damages. When fees are an element of damages, such as when the terms of a contract provide for the recovery of fees incurred prior to the instant adversary proceeding, the general pleading requirements of this rule still apply.

**Rule 7012. Defenses and Objections—When and How Presented— By Pleading or Motion—Motion for Judgment on the Pleadings**

1  
2  
3  
4  
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\* \* \* \* \*

(b) APPLICABILITY OF RULE 12(b)-(I) F.R. CIV. P.  
Rule 12(b)-(i) F.R. Civ. P. applies in adversary proceedings. A responsive pleading ~~shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge court. In non-core proceedings, final orders and judgments shall not be entered on the bankruptcy judge’s order except with the express consent of the parties.~~

**COMMITTEE NOTE**

Subdivision (b) is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to require in all proceedings that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. The amended rule also removes the provision requiring express consent before the entry of final orders and judgments in non-core proceedings. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. This amendment complements the requirements of amended Rule 7008(a). The bankruptcy judge’s subsequent determination of the appropriate course of proceedings, including whether to enter final orders and judgments or to issue proposed findings of fact and conclusions of law, is a pretrial matter now provided for in amended Rule 7016.

**Rule 7016. Pre-Trial Procedures; Formulating Issues**

- 1                    (a) PRETRIAL CONFERENCES; SCHEDULING;  
2                    MANAGEMENT. Rule 16 F.R.Civ.P. applies in adversary  
3                    proceedings.  
4                    (b) DETERMINING PROCEDURE. The bankruptcy  
5                    court shall decide, on its own motion or a party’s timely motion,  
6                    whether:  
7                                (1) to hear and determine the proceeding;  
8                                (2) to hear the proceeding and issue proposed  
9                                findings of fact and conclusions of law; or  
10                               (3) to take some other action.

**COMMITTEE NOTE**

This rule is amended to create a new subdivision (b) that provides for the bankruptcy court to enter final orders and judgment, issue proposed findings and conclusions, or take some other action in a proceeding. The rule leaves the decision as to the appropriate course of proceedings to the bankruptcy court. The court’s decision will be informed by the extent of the district court’s order of reference to the bankruptcy court and by the parties’ statements, required under Rules 7008(a), 7012(b), and 9027(a) and (e), regarding consent to the entry of final orders and judgment. If the bankruptcy court chooses to issue proposed findings of fact and conclusions of law, Rule 9033 applies.

**Rule 7054. Judgments; Costs**

1           (a) JUDGMENTS. Rule 54(a)-(c) F.R. Civ. P. applies in  
2           adversary proceedings.

3           (b) COSTS; ATTORNEY’S FEES

4                        (1) Costs Other Than Attorney’s Fees. The court  
5           may allow costs to the prevailing party except when a statute of the  
6           United States or these rules otherwise provides. Costs against the  
7           United States, its officers and agencies shall be imposed only to  
8           the extent permitted by law. Costs may be taxed by the clerk on 14  
9           days’ notice; on motion served within seven days thereafter, the  
10          action of the clerk may be reviewed by the court.

11                       (2) Attorney’s Fees.

12                                (A) Rule 54(d)(2)(A)-(C) and (E) F.R. Civ.  
13          P. applies in adversary proceedings except for the reference in  
14          Rule 54(d)(2)(C) to Rule 78.

15                                (B) By local rule, the court may establish  
16          special procedures to resolve fee-related issues without extensive  
17          evidentiary hearings.

**COMMITTEE NOTE**

Subdivision (b) is amended to prescribe the procedure for seeking an award of attorney’s fees and related nontaxable expenses in adversary proceedings. It does so by adding new paragraph (2) that incorporates most of the provisions of Rule 54(d)(2) F.R. Civ. P. The title of subdivision (b)

is amended to reflect the new content, and the previously existing provision governing costs is renumbered as paragraph (1) and re-titled.

As provided in Rule 54(d)(2)(A), new subsection (b)(2) does not apply to fees recoverable as an element of damages, as when sought under the terms of a contract providing for the recovery of fees incurred prior to the instant adversary proceeding. Such fees typically are required to be claimed in a pleading.

Rule 54(d)(2)(D) F.R. Civ. P. does not apply in adversary proceedings insofar as it authorizes the referral of fee matters to a master or a magistrate judge. The use of masters is not authorized in bankruptcy cases, *see* Rule 9031, and 28 U.S.C. § 636 does not authorize a magistrate judge to exercise jurisdiction upon referral by a bankruptcy judge. The remaining provision of Rule 54(d)(2)(D) is expressed in subdivision (b)(2)(B) of this rule.

Rule 54(d)(2)(C) refers to Rule 78 F.R. Civ. P., which is not applicable in adversary proceedings. Accordingly, that reference is not incorporated by this rule.

**Rule 9023. New Trials; Amendment of Judgments**

1           Except as provided in this rule and Rule 3008, Rule 59  
2           F.R.Civ.P. applies in cases under the Code. A motion for a new  
3           trial or to alter or amend a judgment shall be filed, and a court may  
4           on its own order a new trial, no later than 14 days after entry of  
5           judgment. In some circumstances, Rule 8008 governs post-  
6           judgment motion practice after an appeal has been docketed and is  
7           pending.

**COMMITTEE NOTE**

This rule is amended to include a cross-reference to Rule 8008. That rule governs the issuance of an indicative ruling when relief is sought that the court lacks authority to grant because of an appeal that has been docketed and is pending.

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

1           Rule 60 F.R.Civ.P. applies in cases under the Code except  
2           that (1) a motion to reopen a case under the Code or for the  
3           reconsideration of an order allowing or disallowing a claim against  
4           the estate entered without a contest is not subject to the one-year  
5           limitation prescribed in Rule 60(c), (2) a complaint to revoke a  
6           discharge in a chapter 7 liquidation case may be filed only within  
7           the time allowed by § 727(e) of the Code, and (3) a complaint to  
8           revoke an order confirming a plan may be filed only within the  
9           time allowed by § 1144, § 1230, or § 1330. In some  
10          circumstances, Rule 8008 governs post-judgment motion practice  
11          after an appeal has been docketed and is pending.

### **COMMITTEE NOTE**

This rule is amended to include a cross-reference to Rule 8008. That rule governs the issuance of an indicative ruling when relief is sought that the court lacks authority to grant because of an appeal that has been docketed and is pending.

**Rule 9027. Removal**

1 (a) NOTICE OF REMOVAL.

2 (1) *Where filed; form and content.* A notice of  
3 removal shall be filed with the clerk for the district and  
4 division within which is located the state or federal court  
5 where the civil action is pending. The notice shall be  
6 signed pursuant to Rule 9011 and contain a short and plain  
7 statement of the facts which entitle the party filing the  
8 notice to remove, contain a statement that upon removal of  
9 the claim or cause of action ~~the proceeding is core or non-~~  
10 ~~core and, if non-core, that~~ the party filing the notice does or  
11 does not consent to entry of final orders or judgment by the  
12 bankruptcy ~~judge~~ court, and be accompanied by a copy of  
13 all process and pleadings.

14 \* \* \* \* \*

15 (e) PROCEDURE AFTER REMOVAL.

16 \* \* \* \* \*

17 (3) Any party who has filed a pleading in  
18 connection with the removed claim or cause of action,  
19 other than the party filing the notice of removal, shall file a  
20 ~~statement admitting or denying any allegation in the notice~~  
21 ~~of removal that upon removal of the claim or cause of~~



22 ~~action the proceeding is core or non-core. If the statement~~  
23 ~~alleges that the proceeding is non-core, it shall state that the~~  
24 party does or does not consent to entry of final orders or  
25 judgment by the bankruptcy ~~judge~~ court. A statement  
26 required by this paragraph shall be signed pursuant to Rule  
27 9011 and shall be filed not later than 14 days after the filing  
28 of the notice of removal. Any party who files a statement  
29 pursuant to this paragraph shall mail a copy to every other  
30 party to the removed claim or cause of action.

31 \* \* \* \* \*

#### **COMMITTEE NOTE**

Subdivisions (a)(1) and (e)(3) are amended to delete the requirement for a statement that the proceeding is core or non-core and to require in all removed actions a statement that the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for a statement regarding consent at the time of removal, whether or not a proceeding is termed non-core.

The party filing the notice of removal must include a statement regarding consent in the notice, and the other parties who have filed pleadings must respond in a separate statement filed within 14 days after removal. If a party to the removed claim or cause of action has not filed a pleading prior to removal, however, there is no need to file a separate statement under subdivision (e)(3), because a statement regarding consent must be included in a responsive pleading filed pursuant to Rule 7012(b). Rule 7016 governs the bankruptcy court's decision whether to hear and determine the proceeding, issue proposed findings of fact and conclusions of law, or take some other action in the proceeding.



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

**PART VIII. BANKRUPTCY APPEALS**

**Rule**

- 8001. Scope of Part VIII Rules; Definition of “BAP”; Method of Transmission
- 8002. Time for Filing Notice of Appeal
- 8003. Appeal as of Right—How Taken; Docketing the Appeal
- 8004. Appeal by Leave—How Taken; Docketing the Appeal
- 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP
- 8006. Certifying a Direct Appeal to the Court of Appeals
- 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings
- 8008. Indicative Rulings
- 8009. Record on Appeal; Sealed Documents
- 8010. Completing and Transmitting the Record
- 8011. Filing and Service; Signature
- 8012. Corporate Disclosure Statement
- 8013. Motions; Intervention
- 8014. Briefs
- 8015. Form and Length of Briefs; Form of Appendices and Other Papers
- 8016. Cross-Appeals
- 8017. Brief of an Amicus Curiae

- 8018. Serving and Filing Briefs; Appendices
- 8019. Oral Argument
- 8020. Frivolous Appeal and Other Misconduct
- 8021. Costs
- 8022. Motion for Rehearing
- 8023. Voluntary Dismissal
- 8024. Clerk's Duties on Disposition of the Appeal
- 8025. Stay of a District Court or BAP Judgment
- 8026. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law
- 8027. Notice of a Mediation Procedure
- 8028. Suspension of Rules in Part VIII

**Rule 8001. Scope of Part VIII Rules; Definition of “BAP”;  
Method of Transmission**

1           (a) GENERAL SCOPE. These Part VIII rules govern the  
2           procedure in a United States district court and a bankruptcy  
3           appellate panel on appeal from a judgment, order, or decree of a  
4           bankruptcy court. They also govern certain procedures on appeal  
5           to a United States court of appeals under 28 U.S.C. § 158(d).

6           (b) DEFINITION OF “BAP.” “BAP” means a bankruptcy  
7           appellate panel established by a circuit’s judicial council and  
8           authorized to hear appeals from a bankruptcy court under 28  
9           U.S.C. § 158.

10          (c) METHOD OF TRANSMITTING DOCUMENTS. A  
11          document must be sent electronically under these Part VIII rules,  
12          unless it is being sent by or to an individual who is not represented  
13          by counsel or the court’s governing rules permit or require mailing  
14          or other means of delivery.

**COMMITTEE NOTE**

These Part VIII rules apply to appeals under 28 U.S.C. § 158(a) from bankruptcy courts to district courts and BAPs. The Federal Rules of Appellate Procedure generally govern bankruptcy appeals to courts of appeals.

Eight of the Part VIII rules do, however, relate to appeals to courts of appeals. Rule 8004(e) provides that the authorization by a court of appeals of a direct appeal of a bankruptcy court’s interlocutory order or decree constitutes a grant of leave to appeal. Rule 8006 governs the procedure for certification under 28 U.S.C. § 158(d)(2) of a direct appeal from a judgment, order, or decree of a bankruptcy court to a court of appeals. Rule 8007 addresses stays pending a direct appeal to a court of

appeals. Rule 8008 authorizes a bankruptcy court to issue an indicative ruling while an appeal is pending in a court of appeals. Rules 8009 and 8010 govern the record on appeal in a direct appeal to a court of appeals. Rule 8025 governs the granting of a stay of a district court or BAP judgment pending an appeal to the court of appeals. And Rule 8028 authorizes the court of appeals to suspend applicable Part VIII rules in a particular case, subject to certain enumerated exceptions.

These rules take account of the evolving technology in the federal courts for the electronic filing, storage, and transmission of documents. Except as applied to pro se parties, the Part VIII rules require documents to be sent electronically, unless applicable court rules or orders expressly require or permit another means of sending a particular document.

**Rule 8002. Time for Filing Notice of Appeal**

1 (a) IN GENERAL.

2 (1) *Fourteen-Day Period.* Except as provided in  
3 subdivisions (b) and (c), a notice of appeal must be filed  
4 with the bankruptcy clerk within 14 days after entry of the  
5 judgment, order, or decree being appealed.

6 (2) *Filing Before the Entry of Judgment.* A notice  
7 of appeal filed after the bankruptcy court announces a  
8 decision or order—but before entry of the judgment, order,  
9 or decree—is treated as filed on the date of and after the  
10 entry.

11 (3) *Multiple Appeals.* If one party files a timely  
12 notice of appeal, any other party may file a notice of appeal  
13 within 14 days after the date when the first notice was filed,  
14 or within the time otherwise allowed by this rule,  
15 whichever period ends later.

16 (4) *Mistaken Filing in Another Court.* If a notice  
17 of appeal is mistakenly filed in a district court, BAP, or  
18 court of appeals, the clerk of that court must state on the  
19 notice the date on which it was received and transmit it to  
20 the bankruptcy clerk. The notice of appeal is then

21 considered filed in the bankruptcy court on the date so  
22 stated.

23 (b) EFFECT OF A MOTION ON THE TIME TO  
24 APPEAL.

25 (1) *In General.* If a party timely files in the  
26 bankruptcy court any of the following motions, the time to  
27 file an appeal runs for all parties from the entry of the order  
28 disposing of the last such remaining motion:

29 (A) to amend or make additional findings  
30 under Rule 7052, whether or not granting the  
31 motion would alter the judgment;

32 (B) to alter or amend the judgment under  
33 Rule 9023;

34 (C) for a new trial under Rule 9023; or

35 (D) for relief under Rule 9024 if the motion  
36 is filed within 14 days after the judgment is entered.

37 (2) *Filing an Appeal Before the Motion is Decided.*

38 If a party files a notice of appeal after the court announces  
39 or enters a judgment, order, or decree—but before it  
40 disposes of any motion listed in subdivision (b)(1)—the  
41 notice becomes effective when the order disposing of the  
42 last such remaining motion is entered.

43 (3) *Appealing the Motion.* If a party intends to



44 challenge an order disposing of any motion listed in  
45 subdivision (b)(1)—or the alteration or amendment of a  
46 judgment, order, or decree upon the motion—the party  
47 must file a notice of appeal or an amended notice of appeal.  
48 The notice or amended notice must comply with Rule 8003  
49 or 8004 and be filed within the time prescribed by this rule,  
50 measured from the entry of the order disposing of the last  
51 such remaining motion.

52 (4) *No Additional Fee.* No additional fee is  
53 required to file an amended notice of appeal.

54 (c) APPEAL BY AN INMATE CONFINED IN AN  
55 INSTITUTION.

56 (1) *In General.* If an inmate confined in an  
57 institution files a notice of appeal from a judgment, order,  
58 or decree of a bankruptcy court to a district court or BAP,  
59 the notice is timely if it is deposited in the institution's  
60 internal mail system on or before the last day for filing. If  
61 the institution has a system designed for legal mail, the  
62 inmate must use that system to receive the benefit of this  
63 rule. Timely filing may be shown by a declaration in  
64 compliance with 28 U.S.C. § 1746 or by a notarized  
65 statement, either of which must set forth the date of deposit  
66 and state that first-class postage has been prepaid.

67                           (2) *Multiple Appeals*. If an inmate files under this  
68                           subdivision the first notice of appeal, the 14-day period  
69                           provided in subdivision (a)(3) for another party to file a  
70                           notice of appeal runs from the date when the bankruptcy  
71                           clerk docket the first notice.

72                           (d) EXTENDING THE TIME TO APPEAL.

73                           (1) *When the Time May be Extended*. Except as  
74                           provided in subdivision (d)(2), the bankruptcy court may  
75                           extend the time to file a notice of appeal upon a party's  
76                           motion that is filed:

77   (A) within the time prescribed by this rule;

78   or

79   (B) within 21 days after that time, if the  
80   party shows excusable neglect.

81                           (2) *When the Time May Not be Extended*. The  
82                           bankruptcy court may not extend the time to file a notice of  
83                           appeal if the judgment, order, or decree appealed from:

84   (A) grants relief from an automatic stay  
85   under § 362, 922, 1201, or 1301 of the Code;

86   (B) authorizes the sale or lease of property  
87   or the use of cash collateral under § 363 of the  
88   Code;

89   (C) authorizes the obtaining of credit under

90 § 364 of the Code;

91 (D) authorizes the assumption or

92 assignment of an executory contract or unexpired

93 lease under § 365 of the Code;

94 (E) approves a disclosure statement under

95 § 1125 of the Code; or

96 (F) confirms a plan under § 943, 1129,

97 1225, or 1325 of the Code.

98 (3) *Time Limits on an Extension.* No extension of

99 time may exceed 21 days after the time prescribed by this

100 rule, or 14 days after the order granting the motion to

101 extend time is entered, whichever is later.

### COMMITTEE NOTE

This rule is derived from former Rule 8002 and F.R.App.P. 4(a) and (c). With the exception of subdivision (c), the changes to the former rule are stylistic. The rule retains the former rule's 14-day time period for filing a notice of appeal, as opposed to the longer periods permitted for appeals in civil cases under F.R.App.P. 4(a).

Subdivision (a) continues to allow any other party to file a notice of appeal within 14 days after the first notice of appeal is filed, or thereafter to the extent otherwise authorized by this rule. Subdivision (a) also retains provisions of the former rule that prescribe the date the notice of appeal is deemed filed if the appellant files it prematurely or in the wrong court.

Subdivision (b), like former Rule 8002(b) and F.R.App.P. 4(a), tolls the time for filing a notice of appeal when certain postjudgment motions are filed, and it prescribes the effective date of a notice of appeal that is filed before the court disposes of all of the specified motions. As under the former rule, a party that wants to appeal the court's disposition of the motion or the alteration or amendment of a judgment, order, or decree in response to such a motion must file a notice of appeal or, if it has already

filed one, an amended notice of appeal.

Although Rule 8003(a)(3)(C) requires a notice of appeal to be accompanied by the required fee, no additional fee is required for the filing of an amended notice of appeal.

Subdivision (c) mirrors the provisions of F.R.App.P. 4(c)(1) and (2), which specify timing rules for a notice of appeal filed by an inmate confined in an institution.

Subdivision (d) continues to allow the court to grant an extension of time to file a notice of appeal, except with respect to certain specified judgments, orders, and decrees.

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

1 (a) FILING THE NOTICE OF APPEAL.

2 (1) *In General.* An appeal from a judgment, order,  
3 or decree of a bankruptcy court to a district court or BAP  
4 under 28 U.S.C. § 158(a)(1) or (a)(2) may be taken only by  
5 filing a notice of appeal with the bankruptcy clerk within  
6 the time allowed by Rule 8002.

7 (2) *Effect of Not Taking Other Steps.* An  
8 appellant's failure to take any step other than the timely  
9 filing of a notice of appeal does not affect the validity of  
10 the appeal, but is ground only for the district court or BAP  
11 to act as it considers appropriate, including dismissing the  
12 appeal.

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

14 (A) conform substantially to the appropriate  
15 Official Form;

16 (B) be accompanied by the judgment, order,  
17 or decree, or the part of it, being appealed; and

18 (C) be accompanied by the prescribed fee.

19 (4) *Additional Copies.* If requested to do so, the  
20 appellant must furnish the bankruptcy clerk with enough  
21 copies of the notice to enable the clerk to comply with  
22 subdivision (c).

23 (b) JOINT OR CONSOLIDATED APPEALS.

24 (1) *Joint Notice of Appeal.* When two or more  
25 parties are entitled to appeal from a judgment, order, or  
26 decree of a bankruptcy court and their interests make  
27 joinder practicable, they may file a joint notice of appeal.  
28 They may then proceed on appeal as a single appellant.

29 (2) *Consolidating Appeals.* When parties have  
30 separately filed timely notices of appeal, the district court  
31 or BAP may join or consolidate the appeals.

32 (c) SERVING THE NOTICE OF APPEAL.

33 (1) *Transmitting to the United States Trustee and*  
34 *Other Parties.* The bankruptcy clerk must transmit the  
35 notice of appeal to the United States trustee and to counsel  
36 of record for each party to the appeal, excluding the  
37 appellant. If a party is proceeding pro se, the clerk must  
38 send the notice of appeal to the party's last known address.  
39 The clerk must note, on each copy, the date when the notice  
40 of appeal was filed.

41 (2) *Effect of Failing to Transmit Notice.* The  
42 bankruptcy clerk's failure to transmit notice to a party or  
43 the United States trustee does not affect the validity of  
44 the appeal.

45 (3) *Noting Service on the Docket.* The clerk must

46 note on the docket the names of the parties served and the  
47 date and method of the service.

48 (d) TRANSMITTING THE NOTICE OF APPEAL TO  
49 THE DISTRICT COURT OR BAP; DOCKETING THE APPEAL.

50 (1) *Transmitting the Notice.* The bankruptcy clerk  
51 must promptly transmit the notice of appeal to the BAP  
52 clerk if a BAP has been established for appeals from that  
53 district and the appellant has not elected to have the district  
54 court hear the appeal. Otherwise, the bankruptcy clerk  
55 must promptly transmit the notice to the district clerk.

56 (2) *Docketing in the District Court or BAP.* Upon  
57 receiving the notice of appeal, the district or BAP clerk  
58 must docket the appeal under the title of the bankruptcy  
59 court action and must identify the appellant, adding the  
60 appellant's name if necessary.

### COMMITTEE NOTE

This rule is derived from several former Bankruptcy Rule and Appellate Rule provisions. It addresses appeals as of right, joint and consolidated appeals, service of the notice of appeal, and the timing of the docketing of an appeal in the district court or BAP.

Subdivision (a) incorporates, with stylistic changes, much of the content of former Rule 8001(a) regarding the taking of an appeal as of right under 28 U.S.C. § 158(a)(1) or (2). The rule now requires that the judgment, order, or decree being appealed be attached to the notice of appeal.

Subdivision (b), which is an adaptation of F.R.App.P. 3(b), permits the filing of a joint notice of appeal by multiple appellants that have

sufficiently similar interests that their joinder is practicable. It also allows the district court or BAP to consolidate appeals taken separately by two or more parties.

Subdivision (c) is derived from former Rule 8004 and F.R.App.P. 3(d). Under Rule 8001(c), the former rule's requirement that service of the notice of appeal be accomplished by mailing is generally modified to require that the bankruptcy clerk serve counsel by electronic means. Service on pro se parties must be made by sending the notice to the address most recently provided to the court.

Subdivision (d) modifies the provision of former Rule 8007(b), which delayed the docketing of an appeal by the district court or BAP until the record was complete and the bankruptcy clerk transmitted it. The new provision, adapted from F.R.App.P. 3(d) and 12(a), requires the bankruptcy clerk to promptly transmit the notice of appeal to the clerk of the district court or BAP. Upon receipt of the notice of appeal, the district or BAP clerk must docket the appeal. Under this procedure, motions filed in the district court or BAP prior to completion and transmission of the record can generally be placed on the docket of an already pending appeal.



**Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal**

1           (a) NOTICE OF APPEAL AND MOTION FOR LEAVE  
2 TO APPEAL. To appeal from an interlocutory order or decree of a  
3 bankruptcy court under 28 U.S.C. § 158(a)(3), a party must file  
4 with the bankruptcy clerk a notice of appeal as prescribed by Rule  
5 8003(a). The notice must:

- 6                   (1) be filed within the time allowed by Rule 8002;
- 7                   (2) be accompanied by a motion for leave to appeal  
8 prepared in accordance with subdivision (b); and
- 9                   (3) unless served electronically using the court’s  
10 transmission equipment, include proof of service in  
11 accordance with Rule 8011(d).

12           (b) CONTENTS OF THE MOTION; RESPONSE.

13                   (1) *Contents.* A motion for leave to appeal under  
14 28 U.S.C. § 158(a)(3) must include the following:

- 15                           (A) the facts necessary to understand the  
16 question presented;
- 17                           (B) the question itself;
- 18                           (C) the relief sought;
- 19                           (D) the reasons why leave to appeal should  
20 be granted; and
- 21                           (E) a copy of the interlocutory order or  
22 decree and any related opinion or memorandum.

23                   (2) *Response.* A party may file with the district or  
24                   BAP clerk a response in opposition or a cross-motion  
25                   within 14 days after the motion is served.

26                   (c) TRANSMITTING THE NOTICE OF APPEAL AND  
27                   THE MOTION; DOCKETING THE APPEAL; DETERMINING  
28                   THE MOTION.

29                   (1) *Transmitting to the District Court or BAP.* The  
30                   bankruptcy clerk must promptly transmit the notice of  
31                   appeal and the motion for leave to the BAP clerk if a BAP  
32                   has been established for appeals from that district and the  
33                   appellant has not elected to have the district court hear the  
34                   appeal. Otherwise, the bankruptcy clerk must promptly  
35                   transmit the notice and motion to the district clerk.

36                   (2) *Docketing in the District Court or BAP.* Upon  
37                   receiving the notice and motion, the district or BAP clerk  
38                   must docket the appeal under the title of the bankruptcy  
39                   court action and must identify the appellant, adding the  
40                   appellant's name if necessary.

41                   (3) *Oral Argument Not Required.* The motion and  
42                   any response or cross-motion are submitted without oral  
43                   argument unless the district court or BAP orders otherwise.  
44                   If the motion is denied, the district court or BAP must  
45                   dismiss the appeal.

46 (d) FAILURE TO FILE A MOTION WITH A NOTICE  
47 OF APPEAL. If an appellant timely files a notice of appeal under  
48 this rule but does not include a motion for leave, the district court  
49 or BAP may order the appellant to file a motion for leave, or treat  
50 the notice of appeal as a motion for leave and either grant or deny  
51 it. If the court orders that a motion for leave be filed, the appellant  
52 must do so within 14 days after the order is entered, unless the  
53 order provides otherwise.

54 (e) DIRECT APPEAL TO A COURT OF APPEALS. If  
55 leave to appeal an interlocutory order or decree is required under  
56 28 U.S.C. § 158(a)(3), an authorization of a direct appeal by the  
57 court of appeals under 28 U.S.C. § 158(d)(2) satisfies the  
58 requirement.

#### **COMMITTEE NOTE**

This rule is derived from former Rules 8001(b) and 8003 and F.R.App.P. 5. It retains the practice for interlocutory bankruptcy appeals of requiring a notice of appeal to be filed along with a motion for leave to appeal. Like current Rule 8003, it alters the timing of the docketing of the appeal in the district court or BAP.

Subdivision (a) requires a party seeking leave to appeal under 28 U.S.C. § 158(a)(3) to file with the bankruptcy clerk both a notice of appeal and a motion for leave to appeal.

Subdivision (b) prescribes the contents of the motion, retaining the requirements of former Rule 8003(a). It also continues to allow another party to file a cross-motion or response to the appellant's motion. Because of the prompt docketing of the appeal under the current rule, the cross-motion or response must be filed in the district court or BAP, rather than in the bankruptcy court as the former rule required.

Subdivision (c) requires the bankruptcy clerk to transmit promptly to the district court or BAP the notice of appeal and the motion for leave to appeal. Upon receipt of the notice and the motion, the district or BAP clerk must docket the appeal. Unless the district court or BAP orders otherwise, no oral argument will be held on the motion.

Subdivision (d) retains the provisions of former Rule 8003(c). It provides that if the appellant timely files a notice of appeal, but fails to file a motion for leave to appeal, the court can either direct that a motion be filed or treat the notice of appeal as the motion and either grant or deny leave.

Subdivision (e), like former Rule 8003(d), treats the authorization of a direct appeal by the court of appeals as a grant of leave to appeal under 28 U.S.C. § 158(a)(3) if the district court or BAP has not already granted leave. Thus, a separate order granting leave to appeal is not required. If the court of appeals grants permission to appeal, the record must be assembled and transmitted in accordance with Rules 8009 and 8010.

**Rule 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP**

1           (a) FILING OF A STATEMENT OF ELECTION. To  
2 elect to have an appeal heard by the district court, a party must:

3                   (1) file a statement of election that conforms  
4 substantially to the appropriate Official Form; and

5                   (2) do so within the time prescribed by 28 U.S.C.  
6 § 158(c)(1).

7           (b) TRANSFERRING THE DOCUMENTS RELATED  
8 TO THE APPEAL. Upon receiving an appellant’s timely  
9 statement of election, the bankruptcy clerk must transmit to the  
10 district clerk all documents related to the appeal. Upon receiving a  
11 timely statement of election by a party other than the appellant, the  
12 BAP clerk must transmit to the district clerk all documents related  
13 to the appeal.

14           (c) DETERMINING THE VALIDITY OF AN  
15 ELECTION. A party seeking a determination of the validity of an  
16 election must file a motion in the court where the appeal is then  
17 pending. The motion must be filed within 14 days after the  
18 statement of election is filed.

19           (d) MOTION FOR LEAVE WITHOUT A NOTICE OF  
20 APPEAL—EFFECT ON THE TIMING OF AN ELECTION. If  
21 an appellant moves for leave to appeal under Rule 8004 but fails to  
22 file a separate notice of appeal with the motion, the motion must be

23 treated as a notice of appeal for purposes of determining the  
24 timeliness of a statement of election.

### **COMMITTEE NOTE**

This rule, which implements 28 U.S.C. § 158(c)(1), is derived from former Rule 8001(e).

As the former rule required, subdivision (a) provides that an appellant that elects to have a district court, rather than a BAP, hear its appeal must file with the bankruptcy clerk a statement of election when it files its notice of appeal. The statement must conform substantially to the appropriate Official Form. If a BAP has been established for appeals from the bankruptcy court and the appellant does not file a timely statement of election, any other party that elects to have the district court hear the appeal must file a statement of election with the BAP clerk no later than 30 days after service of the notice of appeal.

Subdivision (b) requires the bankruptcy clerk to transmit all appeal documents to the district clerk if the appellant files a timely statement of election. If the appellant does not make that election, the bankruptcy clerk must transmit those documents to the BAP clerk, and upon a timely election by any other party, the BAP clerk must promptly transmit the appeal documents to the district clerk.

Subdivision (c) provides a new procedure for the resolution of disputes regarding the validity of an election. A motion seeking the determination of the validity of an election must be filed no later than 14 days after the statement of election is filed. Nothing in this rule prevents a court from determining the validity of an election on its own motion.

Subdivision (d) provides that, in the case of an appeal by leave, if the appellant files a motion for leave to appeal but fails to file a notice of appeal, the filing and service of the motion will be treated for timing purposes under this rule as the filing and service of the notice of appeal.

**Rule 8006. Certifying a Direct Appeal to the Court of Appeals**

1           (a) EFFECTIVE DATE OF A CERTIFICATION. A  
2 certification of a judgment, order, or decree of a bankruptcy court  
3 for direct review in a court of appeals under 28 U.S.C. § 158(d)(2)  
4 is effective when:

- 5                       (1) the certification has been filed;
- 6                       (2) a timely appeal has been taken under Rule 8003  
7 or 8004; and
- 8                       (3) the notice of appeal has become effective under  
9 Rule 8002.

10           (b) FILING THE CERTIFICATION. The certification  
11 must be filed with the clerk of the court where the matter is  
12 pending. For purposes of this rule, a matter remains pending in the  
13 bankruptcy court for 30 days after the effective date of the first  
14 notice of appeal from the judgment, order, or decree for which  
15 direct review is sought. A matter is pending in the district court or  
16 BAP thereafter.

17           (c) JOINT CERTIFICATION BY ALL APPELLANTS  
18 AND APPELLEES. A joint certification by all the appellants and  
19 appellees under 28 U.S.C. § 158(d)(2)(A) must be made by using  
20 the appropriate Official Form. The parties may supplement the  
21 certification with a short statement of the basis for the certification,  
22 which may include the information listed in subdivision (f)(2).

23 (d) THE COURT THAT MAY MAKE THE  
24 CERTIFICATION. Only the court where the matter is pending, as  
25 provided in subdivision (b), may certify a direct review on request  
26 of parties or on its own motion.

27 (e) CERTIFICATION ON THE COURT'S OWN  
28 MOTION.

29 (1) *How Accomplished.* A certification on the  
30 court's own motion must be set forth in a separate  
31 document. The clerk of the certifying court must serve it  
32 on the parties to the appeal in the manner required for  
33 service of a notice of appeal under Rule 8003(c)(1). The  
34 certification must be accompanied by an opinion or  
35 memorandum that contains the information required by  
36 subdivision (f)(2)(A)-(D).

37 (2) *Supplemental Statement by a Party.* Within 14  
38 days after the court's certification, a party may file with the  
39 clerk of the certifying court a short supplemental statement  
40 regarding the merits of certification.

41 (f) CERTIFICATION BY THE COURT ON REQUEST.

42 (1) *How Requested.* A request by a party for  
43 certification that a circumstance specified in 28 U.S.C.  
44 §158(d)(2)(A)(i)-(iii) applies—or a request by a majority of  
45 the appellants and a majority of the appellees—must be



46 filed with the clerk of the court where the matter is pending  
47 within 60 days after the entry of the judgment, order, or  
48 decree.

49 (2) *Service and Contents.* The request must be  
50 served on all parties to the appeal in the manner required  
51 for service of a notice of appeal under Rule 8003(c)(1), and  
52 it must include the following:

53 (A) the facts necessary to understand the  
54 question presented;

55 (B) the question itself;

56 (C) the relief sought;

57 (D) the reasons why the direct appeal  
58 should be allowed, including which circumstance  
59 specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)  
60 applies; and

61 (E) a copy of the judgment, order, or decree  
62 and any related opinion or memorandum.

63 (3) *Time to File a Response or a Cross-Request.* A  
64 party may file a response to the request within 14 days after  
65 the request is served, or such other time as the court where  
66 the matter is pending allows. A party may file a cross-  
67 request for certification within 14 days after the request is  
68 served, or within 60 days after the entry of the judgment,

69 order, or decree, whichever occurs first.

70 (4) *Oral Argument Not Required.* The request,  
71 cross-request, and any response are not governed by Rule  
72 9014 and are submitted without oral argument unless the  
73 court where the matter is pending orders otherwise.

74 (5) *Form and Service of the Certification.* If the  
75 court certifies a direct appeal in response to the request, it  
76 must do so in a separate document. The certification must  
77 be served on the parties to the appeal in the manner  
78 required for service of a notice of appeal under Rule  
79 8003(c)(1).

80 (g) PROCEEDING IN THE COURT OF APPEALS  
81 FOLLOWING A CERTIFICATION. Within 30 days after the  
82 date the certification becomes effective under subdivision (a), a  
83 request for permission to take a direct appeal to the court of  
84 appeals must be filed with the circuit clerk.

#### COMMITTEE NOTE

This rule is derived from former Rule 8001(f), and it provides the procedures for the certification of a direct appeal of a judgment, order, or decree of a bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2). Once a case has been certified in the bankruptcy court, the district court, or the BAP for direct appeal and a request for permission to appeal has been timely filed, the Federal Rules of Appellate Procedure govern further proceedings in the court of appeals.

Subdivision (a), like the former rule, requires that an appeal be

properly taken—now under Rule 8003 or 8004—before a certification for direct review in the court of appeals takes effect. This rule requires the timely filing of a notice of appeal under Rule 8002 and accounts for the delayed effectiveness of a notice of appeal under the circumstances specified in that rule. Ordinarily, a notice of appeal is effective when it is filed in the bankruptcy court. Rule 8002, however, delays the effectiveness of a notice of appeal when (1) it is filed after the announcement of a decision or order but prior to the entry of the judgment, order, or decree; or (2) it is filed after the announcement or entry of a judgment, order, or decree but before the bankruptcy court disposes of certain postjudgment motions.

When the bankruptcy court enters an interlocutory order or decree that is appealable under 28 U.S.C. § 158(a)(3), certification for direct review in the court of appeals may take effect before the district court or BAP grants leave to appeal. The certification is effective when the actions specified in subdivision (a) have occurred. Rule 8004(e) provides that if the court of appeals grants permission to take a direct appeal before leave to appeal an interlocutory ruling has been granted, the authorization by the court of appeals is treated as the granting of leave to appeal.

Subdivision (b) provides that a certification must be filed in the court where the matter is pending, as determined by this subdivision. This provision modifies the former rule. Because of the prompt docketing of appeals in the district court or BAP under Rules 8003 and 8004, a matter is deemed—for purposes of this rule only—to remain pending in the bankruptcy court for 30 days after the effective date of the notice of appeal. This provision will in appropriate cases give the bankruptcy judge, who will be familiar with the matter being appealed, an opportunity to decide whether certification for direct review is appropriate. Similarly, subdivision (d) provides that only the court where the matter is then pending according to subdivision (b) may make a certification on its own motion or on the request of one or more parties.

Section 158(d)(2) provides three different ways in which an appeal may be certified for direct review. Implementing these options, the rule provides in subdivision (c) for the joint certification by all appellants and appellees; in subdivision (e) for the bankruptcy court's, district court's, or BAP's certification on its own motion; and in subdivision (f) for the bankruptcy court's, district court's, or BAP's certification on request of a party or a majority of appellants and a majority of appellees.

Subdivision (g) requires that, once a certification for direct review is made, a request to the court of appeals for permission to take a direct appeal to that court must be filed with the clerk of the court of appeals no later than 30 days after the effective date of the certification. Federal Rule of

Appellate Procedure 6(c), which incorporates all of F.R.App.P. 5 except subdivision (a)(3), prescribes the procedure for requesting the permission of the court of appeals and governs proceedings that take place thereafter in that court.

**Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings**

1 (a) INITIAL MOTION IN THE BANKRUPTCY COURT.

2 (1) *In General.* Ordinarily, a party must move first  
3 in the bankruptcy court for the following relief:

4 (A) a stay of a judgment, order, or decree of  
5 the bankruptcy court pending appeal;

6 (B) the approval of a supersedeas bond;

7 (C) an order suspending, modifying,  
8 restoring, or granting an injunction while an appeal  
9 is pending; or

10 (D) the suspension or continuation of  
11 proceedings in a case or other relief permitted by  
12 subdivision (e).

13 (2) *Time to File.* The motion may be made either  
14 before or after the notice of appeal is filed.

15 (b) MOTION IN THE COURT OF APPEALS ON  
16 DIRECT APPEAL, THE DISTRICT COURT, OR THE BAP.

17 (1) *Request for Relief.* A motion for the relief  
18 specified in subdivision (a)(1)—or to vacate or modify a  
19 bankruptcy court’s order granting such relief—may be  
20 made in the court where the appeal is pending or where it  
21 will be taken.

22 (2) *Showing or Statement Required.* The motion

23 must:

24 (A) show that moving first in the  
25 bankruptcy court would be impracticable; or

26 (B) if a motion was made in the bankruptcy  
27 court, either state that the court has not yet ruled on  
28 the motion, or state that the court has ruled and set  
29 out any reasons given for the ruling.

30 (3) *Additional Content*. The motion must also

31 include:

32 (A) the reasons for granting the relief  
33 requested and the facts relied upon;

34 (B) affidavits or other sworn statements  
35 supporting facts subject to dispute; and

36 (C) relevant parts of the record.

37 (4) *Serving Notice*. The movant must give  
38 reasonable notice of the motion to all parties.

39 (c) **FILING A BOND OR OTHER SECURITY**. The  
40 district court, BAP, or court of appeals may condition relief on  
41 filing a bond or other appropriate security with the bankruptcy  
42 court.

43 (d) **BOND FOR A TRUSTEE OR THE UNITED**  
44 **STATES**. The court may require a trustee to file a bond or other  
45 appropriate security when the trustee appeals. A bond or other

46 security is not required when an appeal is taken by the United  
47 States, its officer, or its agency or by direction of any department  
48 of the federal government.

49 (e) CONTINUED PROCEEDINGS IN THE  
50 BANKRUPTCY COURT. Despite Rule 7062 and subject to the  
51 authority of the district court, BAP, or court of appeals, the  
52 bankruptcy court may:

53 (1) suspend or continue other proceedings in the  
54 case; or

55 (2) issue any other appropriate orders during the  
56 pendency of an appeal to protect the rights of all parties in  
57 interest.

#### COMMITTEE NOTE

This rule is derived from former Rule 8005 and F.R.App.P. 8. It now applies to direct appeals in courts of appeals.

Subdivision (a), like the former rule, requires a party ordinarily to seek relief pending an appeal in the bankruptcy court. Subdivision (a)(1) expands the list of relief enumerated in F.R.App.P. 8(a)(1) to reflect bankruptcy practice. It includes the suspension or continuation of other proceedings in the bankruptcy case, as authorized by subdivision (e). Subdivision (a)(2) clarifies that a motion for a stay pending appeal, approval of a supersedeas bond, or any other relief specified in paragraph (1) may be made in the bankruptcy court before or after the filing of a notice of appeal.

Subdivision (b) authorizes a party to seek the relief specified in (a)(1), or the vacation or modification of the granting of such relief, by means of a motion filed in the court where the appeal is pending or will be taken—district court, BAP, or the court of appeals on direct appeal. Accordingly, a notice of appeal need not be filed with respect to a bankruptcy court’s order granting or denying such a motion. The motion

for relief in the district court, BAP, or court of appeals must state why it was impracticable to seek relief initially in the bankruptcy court, if a motion was not filed there, or why the bankruptcy court denied the relief sought.

Subdivisions (c) and (d) retain the provisions of the former rule that permit the district court or BAP—and now the court of appeals—to condition the granting of relief on the posting of a bond by the appellant, except when that party is a federal government entity. Rule 9025 governs proceedings against sureties.



**Rule 8008. Indicative Rulings**

1           (a) RELIEF PENDING APPEAL. If a party files a timely  
2 motion in the bankruptcy court for relief that the court lacks  
3 authority to grant because of an appeal that has been docketed and  
4 is pending, the bankruptcy court may:

- 5                   (1) defer considering the motion;
- 6                   (2) deny the motion; or
- 7                   (3) state that the court would grant the motion if the  
8 court where the appeal is pending remands for that purpose,  
9 or state that the motion raises a substantial issue.

10           (b) NOTICE TO THE COURT WHERE THE APPEAL IS  
11 PENDING. The movant must promptly notify the clerk of the  
12 court where the appeal is pending if the bankruptcy court states  
13 that it would grant the motion or that the motion raises a  
14 substantial issue.

15           (c) REMAND AFTER AN INDICATIVE RULING. If the  
16 bankruptcy court states that it would grant the motion or that the  
17 motion raises a substantial issue, the district court or BAP may  
18 remand for further proceedings, but it retains jurisdiction unless it  
19 expressly dismisses the appeal. If the district court or BAP  
20 remands but retains jurisdiction, the parties must promptly notify

21 the clerk of that court when the bankruptcy court has decided the  
22 motion on remand.

### COMMITTEE NOTE

This rule is an adaptation of F.R.Civ.P. 62.1 and F.R.App.P. 12.1. It provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue. The rule does not attempt to define the circumstances in which an appeal limits or defeats the bankruptcy court's authority to act in the face of a pending appeal. In contrast, Rule 8002(b) identifies motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before the last such motion is resolved. In those circumstances, the bankruptcy court has authority to resolve the motion without resorting to the indicative ruling procedure.

Subdivision (b) requires the movant to notify the court where an appeal is pending if the bankruptcy court states that it would grant the motion or that it raises a substantial issue. This provision applies to appeals pending in the district court, the BAP, or the court of appeals.

Federal Rules of Appellate Procedure 6 and 12.1 govern the procedure in the court of appeals following notification of the bankruptcy court's indicative ruling.

Subdivision (c) of this rule governs the procedure in the district court or BAP upon notification that the bankruptcy court has issued an indicative ruling. The district court or BAP may remand to the bankruptcy court for a ruling on the motion for relief. The district court or BAP may also remand all proceedings, thereby terminating the initial appeal, if it expressly states that it is dismissing the appeal. It should do so, however, only when the appellant has stated clearly its intention to abandon the appeal. Otherwise, the district court or BAP may remand for the purpose of ruling on the motion, while retaining jurisdiction to proceed with the appeal after the bankruptcy court rules, provided that the appeal is not then moot and a party wishes to proceed.

**Rule 8009. Record on Appeal; Sealed Documents**

1 (a) DESIGNATING THE RECORD ON APPEAL;  
2 STATEMENT OF THE ISSUES.

3 (1) *Appellant.*

4 (A) The appellant must file with the  
5 bankruptcy clerk and serve on the appellee a  
6 designation of the items to be included in the record  
7 on appeal and a statement of the issues to be  
8 presented.

9 (B) The appellant must file and serve the  
10 designation and statement within 14 days after:

11 (i) the appellant's notice of appeal as  
12 of right becomes effective under Rule 8002;

13 or

14 (ii) an order granting leave to appeal  
15 is entered.

16 A designation and statement served prematurely  
17 must be treated as served on the first day on which  
18 filing is timely.

19 (2) *Appellee and Cross-Appellant.* Within 14 days  
20 after being served, the appellee may file and serve on the  
21 appellant a designation of additional items to be included in  
22 the record. An appellee who files a cross-appeal must file

23 and serve a designation of additional items to be included  
24 in the record and a statement of the issues to be presented  
25 on the cross-appeal.

26 (3) *Cross-Appellee*. Within 14 days after service of  
27 the cross-appellant's designation and statement, a cross-  
28 appellee may file and serve on the cross-appellant a  
29 designation of additional items to be included in the record.

30 (4) *Record on Appeal*. The record on appeal must  
31 include the following:

- 32 • items designated by the parties;
- 33 • the notice of appeal;
- 34 • the judgment, order, or decree being  
35 appealed;
- 36 • any order granting leave to appeal;
- 37 • any certification required for a direct appeal  
38 to the court of appeals;
- 39 • any opinion, findings of fact, and  
40 conclusions of law relating to the issues on appeal,  
41 including transcripts of all oral rulings;
- 42 • any transcript ordered under subdivision (b);

- 43                   •       any statement required by subdivision (c);  
44                   and  
45                   •       any additional items from the record that the  
46                   court where the appeal is pending orders.

47                   (5) *Copies for the Bankruptcy Clerk.* If paper  
48                   copies are needed, a party filing a designation of items  
49                   must provide a copy of any of those items that the  
50                   bankruptcy clerk requests. If the party fails to do so, the  
51                   bankruptcy clerk must prepare the copy at the party's  
52                   expense.

53                   (b) TRANSCRIPT OF PROCEEDINGS.

54                   (1) *Appellant's Duty to Order.* Within the time  
55                   period prescribed by subdivision (a)(1), the appellant must:

56                               (A) order in writing from the reporter, as  
57                               defined in Rule 8010(a)(1), a transcript of such  
58                               parts of the proceedings not already on file as the  
59                               appellant considers necessary for the appeal, and  
60                               file a copy of the order with the bankruptcy clerk;  
61                               or

62                               (B) file with the bankruptcy clerk a  
63                               certificate stating that the appellant is not ordering a  
64                               transcript.

65                   (2) *Cross-Appellant's Duty to Order.* Within 14

66 days after the appellant files a copy of the transcript order  
67 or a certificate of not ordering a transcript, the appellee as  
68 cross-appellant must:

69 (A) order in writing from the reporter, as  
70 defined in Rule 8010(a)(1), a transcript of such  
71 additional parts of the proceedings as the cross-  
72 appellant considers necessary for the appeal, and  
73 file a copy of the order with the bankruptcy clerk;  
74 or

75 (B) file with the bankruptcy clerk a  
76 certificate stating that the cross-appellant is not  
77 ordering a transcript.

78 (3) *Appellee's or Cross-Appellee's Right to Order.*

79 Within 14 days after the appellant or cross-appellant files a  
80 copy of a transcript order or certificate of not ordering a  
81 transcript, the appellee or cross-appellee may order in  
82 writing from the reporter a transcript of such additional  
83 parts of the proceedings as the appellee or cross-appellee  
84 considers necessary for the appeal. A copy of the order  
85 must be filed with the bankruptcy clerk.

86 (4) *Payment.* At the time of ordering, a party must  
87 make satisfactory arrangements with the reporter for paying  
88 the cost of the transcript.

89                                   (5) *Unsupported Finding or Conclusion.* If the  
90                                   appellant intends to argue on appeal that a finding or  
91                                   conclusion is unsupported by the evidence or is contrary to  
92                                   the evidence, the appellant must include in the record a  
93                                   transcript of all relevant testimony and copies of all  
94                                   relevant exhibits.

95                                   (c) STATEMENT OF THE EVIDENCE WHEN A  
96                                   TRANSCRIPT IS UNAVAILABLE. If a transcript of a hearing or  
97                                   trial is unavailable, the appellant may prepare a statement of the  
98                                   evidence or proceedings from the best available means, including  
99                                   the appellant's recollection. The statement must be filed within  
100                                  the time prescribed by subdivision (a)(1) and served on the  
101                                  appellee, who may serve objections or proposed amendments  
102                                  within 14 days after being served. The statement and any  
103                                  objections or proposed amendments must then be submitted to the  
104                                  bankruptcy court for settlement and approval. As settled and  
105                                  approved, the statement must be included by the bankruptcy clerk  
106                                  in the record on appeal.

107                                  (d) AGREED STATEMENT AS THE RECORD ON  
108                                  APPEAL. Instead of the record on appeal as defined in  
109                                  subdivision (a), the parties may prepare, sign, and submit to the  
110                                  bankruptcy court a statement of the case showing how the issues  
111                                  presented by the appeal arose and were decided in the bankruptcy

112 court. The statement must set forth only those facts alleged and  
113 proved or sought to be proved that are essential to the court's  
114 resolution of the issues. If the statement is accurate, it—together  
115 with any additions that the bankruptcy court may consider  
116 necessary to a full presentation of the issues on appeal—must be  
117 approved by the bankruptcy court and must then be certified to the  
118 court where the appeal is pending as the record on appeal. The  
119 bankruptcy clerk must then transmit it to the clerk of that court  
120 within the time provided by Rule 8010. A copy of the agreed  
121 statement may be filed in place of the appendix required by Rule  
122 8018(b) or, in the case of a direct appeal to the court of appeals, by  
123 F.R.App.P. 30.

124 (e) CORRECTING OR MODIFYING THE RECORD.

125 (1) *Submitting to the Bankruptcy Court.* If any  
126 difference arises about whether the record accurately  
127 discloses what occurred in the bankruptcy court, the  
128 difference must be submitted to and settled by the  
129 bankruptcy court and the record conformed accordingly. If  
130 an item has been improperly designated as part of the  
131 record on appeal, a party may move to strike that item.

132 (2) *Correcting in Other Ways.* If anything material  
133 to either party is omitted from or misstated in the record by  
134 error or accident, the omission or misstatement may be



135 corrected, and a supplemental record may be certified and  
136 transmitted:

137 (A) on stipulation of the parties;

138 (B) by the bankruptcy court before or after  
139 the record has been forwarded; or

140 (C) by the court where the appeal is  
141 pending.

142 (3) *Remaining Questions.* All other questions as to  
143 the form and content of the record must be presented to the  
144 court where the appeal is pending.

145 (f) **SEALED DOCUMENTS.** A document placed under  
146 seal by the bankruptcy court may be designated as part of the  
147 record on appeal. In doing so, a party must identify it without  
148 revealing confidential or secret information, but the bankruptcy  
149 clerk must not transmit it to the clerk of the court where the appeal  
150 is pending as part of the record. Instead, a party must file a motion  
151 with the court where the appeal is pending to accept the document  
152 under seal. If the motion is granted, the movant must notify the  
153 bankruptcy court of the ruling, and the bankruptcy clerk must  
154 promptly transmit the sealed document to the clerk of the court  
155 where the appeal is pending.

156 (g) **OTHER NECESSARY ACTIONS.** All parties to an  
157 appeal must take any other action necessary to enable the

### COMMITTEE NOTE

This rule is derived from former Rule 8006 and F.R.App.P. 10 and 11(a). The provisions of this rule and Rule 8010 are applicable to appeals taken directly to a court of appeals under 28 U.S.C. § 158(d)(2), as well as to appeals to a district court or BAP. See F.R.App.P. 6(c)(2)(A) and (B).

The rule retains the practice of former Rule 8006 of requiring the parties to designate items to be included in the record on appeal. In this respect, the bankruptcy rule differs from the appellate rule. Among other things, F.R.App.P. 10(a) provides that the record on appeal consists of all the documents and exhibits filed in the case. This requirement would often be unworkable in a bankruptcy context because thousands of items might have been filed in the overall bankruptcy case.

Subdivision (a) provides the time period for an appellant to file a designation of items to be included in the record on appeal and a statement of the issues to be presented. It then provides for the designation of additional items by the appellee, cross-appellant, and cross-appellee, as well as for the cross-appellant's statement of the issues to be presented in its appeal. Subdivision (a)(4) prescribes the content of the record on appeal. Ordinarily, the bankruptcy clerk will not need to have paper copies of the designated items because the clerk will either transmit them to the appellate court electronically or otherwise make them available electronically. If the bankruptcy clerk requires a paper copy of some or all of the items designated as part of the record, the clerk may request the party that designated the item to provide the necessary copies, and the party must comply with the request or bear the cost of the clerk's copying.

Subdivision (b) governs the process for ordering a complete or partial transcript of the bankruptcy court proceedings. In situations in which a transcript is unavailable, subdivision (c) allows for the parties' preparation of a statement of the evidence or proceedings, which must be approved by the bankruptcy court.

Subdivision (d) adopts the practice of F.R.App.P. 10(d) of permitting the parties to agree on a statement of the case in place of the record on appeal. The statement must show how the issues on appeal arose and were decided in the bankruptcy court. It must be approved by the bankruptcy court in order to be certified as the record on appeal.

Subdivision (e), modeled on F.R.App.P. 10(e), provides a procedure for correcting the record on appeal if an item is improperly designated,

omitted, or misstated.

Subdivision (f) is a new provision that governs the handling of any document that remains sealed by the bankruptcy court and that a party wants to include in the record on appeal. The party must request the court where the appeal is pending to accept the document under seal, and that motion must be granted before the bankruptcy clerk may transmit the sealed document to the district, BAP, or circuit clerk.

Subdivision (g) requires the parties' cooperation with the bankruptcy clerk in assembling and transmitting the record. It retains the requirement of former Rule 8006, which was adapted from F.R.App.P. 11(a).

**Rule 8010. Completing and Transmitting the Record**

1 (a) REPORTER’S DUTIES.

2 (1) *Proceedings Recorded Without a Reporter*

3 *Present.* If proceedings were recorded without a reporter  
4 being present, the person or service that the bankruptcy  
5 court designates to transcribe the recording is the reporter  
6 for purposes of this rule.

7 (2) *Preparing and Filing the Transcript.* The  
8 reporter must prepare and file a transcript as follows:

9 (A) Upon receiving an order for a  
10 transcript, the reporter must file in the bankruptcy  
11 court an acknowledgment of the request that shows  
12 when it was received, and when the reporter expects  
13 to have the transcript completed.

14 (B) After completing the transcript, the  
15 reporter must file it with the bankruptcy clerk, who  
16 will notify the district, BAP, or circuit clerk of its  
17 filing.

18 (C) If the transcript cannot be completed  
19 within 30 days after receiving the order, the reporter  
20 must request an extension of time from the  
21 bankruptcy clerk. The clerk must enter on the

22 docket and notify the parties whether the extension  
23 is granted.

24 (D) If the reporter does not file the  
25 transcript on time, the bankruptcy clerk must notify  
26 the bankruptcy judge.

27 (b) CLERK’S DUTIES.

28 (1) *Transmitting the Record—In General.* Subject  
29 to Rule 8009(f) and subdivision (b)(5) of this rule, when  
30 the record is complete, the bankruptcy clerk must transmit  
31 to the clerk of the court where the appeal is pending either  
32 the record or a notice that the record is available  
33 electronically.

34 (2) *Multiple Appeals.* If there are multiple appeals  
35 from a judgment, order, or decree, the bankruptcy clerk  
36 must transmit a single record.

37 (3) *Receiving the Record.* Upon receiving the  
38 record or notice that it is available electronically, the  
39 district, BAP, or circuit clerk must enter that information  
40 on the docket and promptly notify all parties to the appeal.

41 (4) *If Paper Copies Are Ordered.* If the court  
42 where the appeal is pending directs that paper copies of the  
43 record be provided, the clerk of that court must so notify  
44 the appellant. If the appellant fails to provide them, the

45 bankruptcy clerk must prepare them at the appellant's  
46 expense.

47 (5) *When Leave to Appeal is Requested.* Subject to  
48 subdivision (c), if a motion for leave to appeal has been  
49 filed under Rule 8004, the bankruptcy clerk must prepare  
50 and transmit the record only after the district court, BAP, or  
51 court of appeals grants leave.

52 (c) RECORD FOR A PRELIMINARY MOTION IN THE  
53 DISTRICT COURT, BAP, OR COURT OF APPEALS. This  
54 subdivision (c) applies if, before the record is transmitted, a party  
55 moves in the district court, BAP, or court of appeals for any of the  
56 following relief:

- 57 • leave to appeal;
- 58 • dismissal;
- 59 • a stay pending appeal;
- 60 • approval of a supersedeas bond, or additional  
61 security on a bond or undertaking on appeal; or
- 62 • any other intermediate order.

63 The bankruptcy clerk must then transmit to the clerk of the court  
64 where the relief is sought any parts of the record designated by a  
65 party to the appeal or a notice that those parts are available  
66 electronically.

## COMMITTEE NOTE

This rule is derived from former Rule 8007 and F.R.App. P 11. It applies to an appeal taken directly to a court of appeals under 28 U.S.C. § 158(d)(2), as well as to an appeal to a district court or BAP.

Subdivision (a) generally retains the procedure of former Rule 8007(a) regarding the reporter's duty to prepare and file a transcript if a party requests one. It clarifies that the person or service that transcribes the recording of a proceeding is considered the reporter under this rule if the proceeding is recorded without a reporter being present in the courtroom. It also makes clear that the reporter must file with the bankruptcy court the acknowledgment of the request for a transcript and statement of the expected completion date, the completed transcript, and any request for an extension of time beyond 30 days for completion of the transcript.

Subdivision (b) requires the bankruptcy clerk to transmit the record to the district, BAP or circuit clerk when the record is complete and, in the case of appeals under 28 U.S.C. §158(a)(3), leave to appeal has been granted. This transmission will be made electronically, either by sending the record itself or sending notice that the record can be accessed electronically. The court where the appeal is pending may, however, require that a paper copy of some or all of the record be furnished, in which case the clerk of that court will direct the appellant to provide the copies. If the appellant does not do so, the bankruptcy clerk must prepare the copies at the appellant's expense.

In a change from former Rule 8007(b), subdivision (b) of this rule no longer directs the clerk of the appellate court to docket the appeal upon receipt of the record from the bankruptcy clerk. Instead, under Rules 8003(d) and 8004(c) and F.R.App.P. 12(a), the district, BAP, or circuit clerk docket the appeal upon receipt of the notice of appeal or, in the case of appeals under 28 U.S.C. § 158(a)(3), the notice of appeal and the motion for leave to appeal. Accordingly, by the time the district, BAP, or circuit clerk receives the record, the appeal will already be docketed in that court. The clerk of the appellate court must indicate on the docket and give notice to the parties to the appeal when the transmission of the record is received. Under Rule 8018(a) and F.R.App.P. 31, the briefing schedule is generally based on that date.

Subdivision (c) is derived from former Rule 8007(c) and F.R.App.P. 11(g). It provides for the transmission of parts of the record that the parties designate for consideration by the district court, BAP, or court of appeals in ruling on specified preliminary motions filed prior to the preparation and transmission of the record on appeal.

**Rule 8011. Filing and Service; Signature**

1 (a) FILING.

2 (1) *With the Clerk.* A document required or  
3 permitted to be filed in a district court or BAP must be filed  
4 with the clerk of that court.

5 (2) *Method and Timeliness.*

6 (A) *In general.* Filing may be  
7 accomplished by transmission to the clerk of the  
8 district court or BAP. Except as provided in  
9 subdivision (a)(2)(B) and (C), filing is timely only  
10 if the clerk receives the document within the time  
11 fixed for filing.

12 (B) *Brief or Appendix.* A brief or appendix  
13 is also timely filed if, on or before the last day for  
14 filing, it is:

15 (i) mailed to the clerk by first-class  
16 mail—or other class of mail that is at least  
17 as expeditious—postage prepaid, if the  
18 district court’s or BAP’s procedures permit  
19 or require a brief or appendix to be filed by  
20 mailing; or

21 (ii) dispatched to a third-party  
22 commercial carrier for delivery within 3



23 days to the clerk, if the court's procedures so  
24 permit or require.

25 (C) *Inmate Filing*. A document filed by an  
26 inmate confined in an institution is timely if  
27 deposited in the institution's internal mailing  
28 system on or before the last day for filing. If the  
29 institution has a system designed for legal mail, the  
30 inmate must use that system to receive the benefit  
31 of this rule. Timely filing may be shown by a  
32 declaration in compliance with 28 U.S.C. § 1746 or  
33 by a notarized statement, either of which must set  
34 forth the date of deposit and state that first-class  
35 postage has been prepaid.

36 (D) *Copies*. If a document is filed  
37 electronically, no paper copy is required. If a  
38 document is filed by mail or delivery to the district  
39 court or BAP, no additional copies are required.  
40 But the district court or BAP may require by local  
41 rule or by order in a particular case the filing or  
42 furnishing of a specified number of paper copies.

43 (3) *Clerk's Refusal of Documents*. The court's  
44 clerk must not refuse to accept for filing any document  
45 transmitted for that purpose solely because it is not

46 presented in proper form as required by these rules or by  
47 any local rule or practice.

48 (b) SERVICE OF ALL DOCUMENTS REQUIRED.

49 Unless a rule requires service by the clerk, a party must, at or  
50 before the time of the filing of a document, serve it on the other  
51 parties to the appeal. Service on a party represented by counsel  
52 must be made on the party's counsel.

53 (c) MANNER OF SERVICE.

54 (1) *Methods*. Service must be made electronically,  
55 unless it is being made by or on an individual who is not  
56 represented by counsel or the court's governing rules  
57 permit or require service by mail or other means of  
58 delivery. Service may be made by or on an unrepresented  
59 party by any of the following methods:

60 (A) personal delivery;

61 (B) mail; or

62 (C) third-party commercial carrier for  
63 delivery within 3 days.

64 (2) *When Service Is Complete*. Service by  
65 electronic means is complete on transmission, unless the  
66 party making service receives notice that the document was  
67 not transmitted successfully. Service by mail or by  
68 commercial carrier is complete on mailing or delivery to

69 the carrier.

70 (d) PROOF OF SERVICE.

71 (1) *What Is Required.* A document presented for  
72 filing must contain either:

73 (A) an acknowledgment of service by the  
74 person served; or

75 (B) proof of service consisting of a  
76 statement by the person who made service  
77 certifying:

78 (i) the date and manner of service;

79 (ii) the names of the persons served;

80 and

81 (iii) the mail or electronic address,  
82 the fax number, or the address of the place  
83 of delivery, as appropriate for the manner of  
84 service, for each person served.

85 (2) *Delayed Proof.* The district or BAP clerk may  
86 permit documents to be filed without acknowledgment or  
87 proof of service, but must require the acknowledgment or  
88 proof to be filed promptly thereafter.

89 (3) *Brief or Appendix.* When a brief or appendix is  
90 filed, the proof of service must also state the date and  
91 manner by which it was filed.

92                   (e) SIGNATURE. Every document filed electronically  
93                   must include the electronic signature of the person filing it or, if  
94                   the person is represented, the electronic signature of counsel. The  
95                   electronic signature must be provided by electronic means that are  
96                   consistent with any technical standards that the Judicial  
97                   Conference of the United States establishes. Every document filed  
98                   in paper form must be signed by the person filing the document or,  
99                   if the person is represented, by counsel.

#### COMMITTEE NOTE

This rule is derived from former Rule 8008 and F.R.App.P. 25. It adopts some of the additional details of the appellate rule, and it provides greater recognition of the possibility of electronic filing and service.

Subdivision (a) governs the filing of documents in the district court or BAP. Consistent with other provisions of these Part VIII rules, subdivision (a)(2) requires electronic filing of documents, including briefs and appendices, unless the district court's or BAP's procedures permit or require other methods of delivery to the court. An electronic filing is timely if it is received by the district or BAP clerk within the time fixed for filing. No additional copies need to be submitted when documents are filed electronically, by mail, or by delivery unless the district court or BAP requires them.

Subdivision (a)(3) provides that the district or BAP clerk may not refuse to accept a document for filing solely because its form does not comply with these rules or any local rule or practice. The district court or BAP may, however, direct the correction of any deficiency in any document that does not conform to the requirements of these rules or applicable local rules, and may prescribe such other relief as the court deems appropriate.

Subdivisions (b) and (c) address the service of documents in the district court or BAP. Except for documents that the district or BAP clerk must serve, a party that makes a filing must serve copies of the document on the other parties to the appeal. Service on represented parties must be made on counsel. Subdivision (c) expresses the general requirement under these Part VIII rules that documents be sent electronically. *See* Rule 8001(c).

Local court rules, however, may provide for other means of service, and subdivision (c) specifies non-electronic methods of service by or on an unrepresented party. Electronic service is complete upon transmission, unless the party making service receives notice that the transmission did not reach the person intended to be served in a readable form.

Subdivision (d) retains the former rule's provisions regarding proof of service of a document filed in the district court or BAP. In addition, it provides that a certificate of service must state the mail or electronic address or fax number to which service was made.

Subdivision (e) is a new provision that requires an electronic signature of counsel or an unrepresented filer for documents that are filed electronically in the district court or BAP. A local rule may specify a method of providing an electronic signature that is consistent with any standards established by the Judicial Conference of the United States. Paper copies of documents filed in the district court or BAP must bear an actual signature of counsel or the filer. By requiring a signature, subdivision (e) ensures that a readily identifiable attorney or party takes responsibility for every document that is filed.

## **Rule 8012. Corporate Disclosure Statement**

1           (a) WHO MUST FILE. Any nongovernmental corporate  
2 party appearing in the district court or BAP must file a statement  
3 that identifies any parent corporation and any publicly held  
4 corporation that owns 10% or more of its stock or states that there  
5 is no such corporation.

6           (b) TIME TO FILE; SUPPLEMENTAL FILING. A party  
7 must file the statement with its principal brief or upon filing a  
8 motion, response, petition, or answer in the district court or BAP,  
9 whichever occurs first, unless a local rule requires earlier filing.  
10 Even if the statement has already been filed, the party's principal  
11 brief must include a statement before the table of contents. A party  
12 must supplement its statement whenever the required information  
13 changes.

### **COMMITTEE NOTE**

This rule is derived from F.R.App.P. 26.1. It requires the filing of corporate disclosure statements and supplemental statements in order to assist district court and BAP judges in determining whether they should recuse themselves. If filed separately from a brief, motion, response, petition, or answer, the statement must be filed and served in accordance with Rule 8011. Under Rule 8015(a)(7)(B)(iii), the corporate disclosure statement is not included in calculating applicable word-count limitations.

**Rule 8013. Motions; Intervention**

1 (a) CONTENTS OF A MOTION; RESPONSE; REPLY.

2 (1) *Request for Relief.* A request for an order or  
3 other relief is made by filing a motion with the district or  
4 BAP clerk, with proof of service on the other parties to the  
5 appeal.

6 (2) *Contents of a Motion.*

7 (A) *Grounds and the Relief Sought.* A  
8 motion must state with particularity the grounds for  
9 the motion, the relief sought, and the legal argument  
10 necessary to support it.

11 (B) *Motion to Expedite an Appeal.* A  
12 motion to expedite an appeal must explain what  
13 justifies considering the appeal ahead of other  
14 matters. If the district court or BAP grants the  
15 motion, it may accelerate the time to transmit the  
16 record, the deadline for filing briefs and other  
17 documents, oral argument, and the resolution of the  
18 appeal. A motion to expedite an appeal may be  
19 filed as an emergency motion under subdivision (d).

20 (C) *Accompanying Documents.*

21 (i) Any affidavit or other document  
22 necessary to support a motion must be

23 served and filed with the motion.

24 (ii) An affidavit must contain only  
25 factual information, not legal argument.

26 (iii) A motion seeking substantive  
27 relief must include a copy of the bankruptcy  
28 court's judgment, order, or decree, and any  
29 accompanying opinion as a separate exhibit.

30 (D) *Documents Barred or Not Required.*

31 (i) A separate brief supporting or  
32 responding to a motion must not be filed.

33 (ii) A notice of motion is not  
34 required.

35 (iii) A proposed order is not  
36 required.

37 (3) *Response and Reply; Time to File.* Unless the  
38 district court or BAP orders otherwise,

39 (A) any party to the appeal may file a  
40 response to the motion within 7 days after service of  
41 the motion; and

42 (B) the movant may file a reply to a  
43 response within 7 days after service of the response,  
44 but may only address matters raised in the response.

45 (b) DISPOSITION OF A MOTION FOR A



46 PROCEDURAL ORDER. The district court or BAP may rule on a  
47 motion for a procedural order—including a motion under Rule  
48 9006(b) or (c)—at any time without awaiting a response. A party  
49 adversely affected by the ruling may move to reconsider, vacate, or  
50 modify it within 7 days after the procedural order is served.

51 (c) ORAL ARGUMENT. A motion will be decided  
52 without oral argument unless the district court or BAP orders  
53 otherwise.

54 (d) EMERGENCY MOTION.

55 (1) *Noting the Emergency.* When a movant  
56 requests expedited action on a motion because irreparable  
57 harm would occur during the time needed to consider a  
58 response, the movant must insert the word “Emergency”  
59 before the title of the motion.

60 (2) *Contents of the Motion.* The emergency motion  
61 must

62 (A) be accompanied by an affidavit setting  
63 out the nature of the emergency;

64 (B) state whether all grounds for it were  
65 submitted to the bankruptcy court and, if not, why  
66 the motion should not be remanded for the  
67 bankruptcy court to reconsider;

68 (C) include the e-mail addresses, office

69 addresses, and telephone numbers of moving  
70 counsel and, when known, of opposing counsel and  
71 any unrepresented parties to the appeal; and

72 (D) be served as prescribed by Rule 8011.

73 (3) *Notifying Opposing Parties.* Before filing an  
74 emergency motion, the movant must make every  
75 practicable effort to notify opposing counsel and any  
76 unrepresented parties in time for them to respond. The  
77 affidavit accompanying the emergency motion must state  
78 when and how notice was given or state why giving it was  
79 impracticable.

80 (e) POWER OF A SINGLE BAP JUDGE TO  
81 ENTERTAIN A MOTION.

82 (1) *Single Judge's Authority.* A BAP judge may  
83 act alone on any motion, but may not dismiss or otherwise  
84 determine an appeal, deny a motion for leave to appeal, or  
85 deny a motion for a stay pending appeal if denial would  
86 make the appeal moot.

87 (2) *Reviewing a Single Judge's Action.* The BAP  
88 may review a single judge's action, either on its own  
89 motion or on a party's motion.

90 (f) FORM OF DOCUMENTS; PAGE LIMITS; NUMBER  
91 OF COPIES.

92 (1) *Format of a Paper Document.* Rule 27(d)(1)  
93 F.R.App.P. applies in the district court or BAP to a paper  
94 version of a motion, response, or reply.

95 (2) *Format of an Electronically Filed Document.*  
96 A motion, response, or reply filed electronically must  
97 comply with the requirements for a paper version regarding  
98 covers, line spacing, margins, typeface, and type style. It  
99 must also comply with the page limits under paragraph (3).

100 (3) *Page Limits.* Unless the district court or BAP  
101 orders otherwise:

102 (A) a motion or a response to a motion must  
103 not exceed 20 pages, exclusive of the corporate  
104 disclosure statement and accompanying documents  
105 authorized by subdivision (a)(2)(C); and

106 (B) a reply to a response must not exceed  
107 10 pages.

108 (4) *Paper Copies.* Paper copies must be provided  
109 only if required by local rule or by an order in a particular  
110 case.

111 (g) INTERVENING IN AN APPEAL. Unless a statute  
112 provides otherwise, an entity that seeks to intervene in an appeal  
113 pending in the district court or BAP must move for leave to  
114 intervene and serve a copy of the motion on the parties to the

115 appeal. The motion or other notice of intervention authorized by  
116 statute must be filed within 30 days after the appeal is docketed. It  
117 must concisely state the movant’s interest, the grounds for  
118 intervention, whether intervention was sought in the bankruptcy  
119 court, why intervention is being sought at this stage of the  
120 proceeding, and why participating as an amicus curiae would not  
121 be adequate.

### COMMITTEE NOTE

This rule is derived from former Rule 8011 and F.R.App.P. 15(d) and 27. It adopts many of the provisions of the appellate rules that specify the form and page limits of motions and accompanying documents, while also adjusting those requirements for electronic filing. In addition, it prescribes the procedure for seeking to intervene in the district court or BAP.

Subdivision (a) retains much of the content of former Rule 8011(a) regarding the contents of a motion, response, and reply. It also specifies the documents that may accompany a motion. Unlike the former rule, which allowed the filing of separate briefs supporting a motion, subdivision (a) now adopts the practice of F.R.App.P. 27(a) of prohibiting the filing of briefs supporting or responding to a motion. The motion or response itself must include the party’s legal arguments.

Subdivision (a)(2)(B) clarifies the procedure for seeking to expedite an appeal. A motion under this provision seeks to expedite the time for the disposition of the appeal as a whole, whereas an emergency motion—which is addressed by subdivision (d)—typically involves an urgent request for relief short of disposing of the entire appeal (for example, an emergency request for a stay pending appeal to prevent imminent mootness). In appropriate cases—such as when there is an urgent need to resolve the appeal quickly to prevent harm—a party may file a motion to expedite the appeal as an emergency motion.

Subdivision (b) retains the substance of former Rule 8011(b). It authorizes the district court or BAP to act on a motion for a procedural order without awaiting a response to the motion. It specifies that a party seeking reconsideration, vacation, or modification of the order must file a motion within 7 days after service of the order.

Subdivision (c) continues the practice of former Rule 8011(c) and F.R.App.P. 27(e) of dispensing with oral argument of motions in the district court or BAP unless the court orders otherwise.

Subdivision (d), which carries forward the content of former Rule 8011(d), governs emergency motions that the district court or BAP may rule on without awaiting a response when necessary to prevent irreparable harm. A party seeking expedited action on a motion in the district court or BAP must explain the nature of the emergency, whether all grounds in support of the motion were first presented to the bankruptcy court, and, if not, why the district court or BAP should not remand for reconsideration. The moving party must also explain the steps taken to notify opposing counsel and any unrepresented parties in advance of filing the emergency motion and, if they were not notified, why it was impracticable to do so.

Subdivision (e), like former Rule 8011(e) and similar to F.R.App.P. 27(c), authorizes a single BAP judge to rule on certain motions. This authority, however, does not extend to issuing rulings that would dispose of the appeal. For that reason, the rule now prohibits a single BAP judge from denying a motion for a stay pending appeal when the effect of that ruling would be to require dismissal of the appeal as moot. A ruling by a single judge is subject to review by the BAP.

Subdivision (f) incorporates by reference the formatting and appearance requirements of F.R.App.P. 27(d)(1). When paper versions of the listed documents are filed, they must comply with the requirements of the specified rules regarding reproduction, covers, binding, appearance, and format. When these documents are filed electronically, they must comply with the relevant requirements of the specified rules regarding covers and format. Subdivision (f) also specifies page limits for motions, responses, and replies, which is a matter that former Rule 8011 did not address.

Subdivision (g) clarifies the procedure for seeking to intervene in a proceeding that has been appealed. It is based on F.R.App.P. 15(d), but it also requires the moving party to explain why intervention is being sought at the appellate stage. The former Part VIII rules did not address intervention.

**Rule 8014. Briefs**

1           (a) APPELLANT’S BRIEF. The appellant’s brief must  
2 contain the following under appropriate headings and in the order  
3 indicated:

4                   (1) a corporate disclosure statement, if required by  
5 Rule 8012;

6                   (2) a table of contents, with page references;

7                   (3) a table of authorities—cases (alphabetically  
8 arranged), statutes, and other authorities—with references  
9 to the pages of the brief where they are cited;

10                  (4) a jurisdictional statement, including:

11                           (A) the basis for the bankruptcy court’s  
12 subject-matter jurisdiction, with citations to  
13 applicable statutory provisions and stating relevant  
14 facts establishing jurisdiction;

15                           (B) the basis for the district court’s or  
16 BAP’s jurisdiction, with citations to applicable  
17 statutory provisions and stating relevant facts  
18 establishing jurisdiction;

19                           (C) the filing dates establishing the  
20 timeliness of the appeal; and

21                           (D) an assertion that the appeal is from a  
22 final judgment, order, or decree, or information

23                                establishing the district court's or BAP's  
24                                jurisdiction on another basis;

25                                (5) a statement of the issues presented and, for each  
26                                one, a concise statement of the applicable standard of  
27                                appellate review;

28                                (6) a concise statement of the case setting out the  
29                                facts relevant to the issues submitted for review, describing  
30                                the relevant procedural history, and identifying the rulings  
31                                presented for review, with appropriate references to the  
32                                record;

33                                (7) a summary of the argument, which must contain  
34                                a succinct, clear, and accurate statement of the arguments  
35                                made in the body of the brief, and which must not merely  
36                                repeat the argument headings;

37                                (8) the argument, which must contain the  
38                                appellant's contentions and the reasons for them, with  
39                                citations to the authorities and parts of the record on which  
40                                the appellant relies;

41                                (9) a short conclusion stating the precise relief  
42                                sought; and

43                                (10) the certificate of compliance, if required by  
44                                Rule 8015(a)(7) or (b).

45                                (b) APPELLEE'S BRIEF. The appellee's brief must

46 conform to the requirements of subdivision (a)(1)-(8) and (10),  
47 except that none of the following need appear unless the appellee  
48 is dissatisfied with the appellant's statement:

49 (1) the jurisdictional statement;

50 (2) the statement of the issues and the applicable  
51 standard of appellate review; and

52 (3) the statement of the case.

53 (c) **REPLY BRIEF.** The appellant may file a brief in reply  
54 to the appellee's brief. A reply brief must comply with the  
55 requirements of subdivision (a)(2)-(3).

56 (d) **STATUTES, RULES, REGULATIONS, OR**  
57 **SIMILAR AUTHORITY.** If the court's determination of the  
58 issues presented requires the study of the Code or other statutes,  
59 rules, regulations, or similar authority, the relevant parts must be  
60 set out in the brief or in an addendum.

61 (e) **BRIEFS IN A CASE INVOLVING MULTIPLE**  
62 **APPELLANTS OR APPELLEES.** In a case involving more than  
63 one appellant or appellee, including consolidated cases, any  
64 number of appellants or appellees may join in a brief, and any  
65 party may adopt by reference a part of another's brief. Parties may  
66 also join in reply briefs.

67 (f) **CITATION OF SUPPLEMENTAL AUTHORITIES.**  
68 If pertinent and significant authorities come to a party's attention



79 after the party’s brief has been filed—or after oral argument but  
80 before a decision—a party may promptly advise the district or  
81 BAP clerk by a signed submission setting forth the citations. The  
82 submission, which must be served on the other parties to the  
83 appeal, must state the reasons for the supplemental citations,  
84 referring either to the pertinent page of a brief or to a point argued  
85 orally. The body of the submission must not exceed 350 words.  
86 Any response must be made within 7 days after the party is served,  
87 unless the court orders otherwise, and must be similarly limited.

#### COMMITTEE NOTE

This rule is derived from former Rule 8010(a) and (b) and F.R.App.P. 28. Adopting much of the content of Rule 28, it provides greater detail than former Rule 8010 contained regarding appellate briefs.

Subdivision (a) prescribes the content and structure of the appellant’s brief. It largely follows former Rule 8010(a)(1), but, to ensure national uniformity, it eliminates the provision authorizing a district court or BAP to alter these requirements. Subdivision (a)(1) provides that when Rule 8012 requires an appellant to file a corporate disclosure statement, it must be placed at the beginning of the appellant’s brief. Subdivision (a)(10) is new. It implements the requirement under Rule 8015(a)(7)(C) and (b) for the filing of a certificate of compliance with the limit on the number of words or lines allowed to be in a brief.

Subdivision (b) carries forward the provisions of former Rule 8010(a)(2).

Subdivision (c) is derived from F.R.App.P. 28(c). It authorizes an appellant to file a reply brief, which will generally complete the briefing process.

Subdivision (d) is similar to former Rule 8010(b), but it is reworded to reflect the likelihood that briefs will generally be filed electronically rather than in paper form.

Subdivision (e) mirrors F.R.App.P. 28(i). It authorizes multiple appellants or appellees to join in a single brief. It also allows a party to incorporate by reference portions of another party's brief.

Subdivision (f) adopts the procedures of F.R.App.P. 28(j) with respect to the filing of supplemental authorities with the district court or BAP after a brief has been filed or after oral argument. Unlike the appellate rule, it specifies a period of 7 days for filing a response to a submission of supplemental authorities. The supplemental submission and response must comply with the signature requirements of Rule 8011(e).

**Rule 8015. Form and Length of Briefs; Form of Appendices and Other Papers.**

1           (a) PAPER COPIES OF A BRIEF. If a paper copy of a  
2 brief may or must be filed, the following provisions apply:

3                   (1) *Reproduction.*

4                           (A) A brief may be reproduced by any  
5 process that yields a clear black image on light  
6 paper. The paper must be opaque and unglazed.  
7 Only one side of the paper may be used.

8                           (B) Text must be reproduced with a clarity  
9 that equals or exceeds the output of a laser printer.

10                          (C) Photographs, illustrations, and tables  
11 may be reproduced by any method that results in a  
12 good copy of the original. A glossy finish is  
13 acceptable if the original is glossy.

14                   (2) *Cover.* The front cover of a brief must contain:

15                           (A) the number of the case centered at the  
16 top;

17                           (B) the name of the court;

18                           (C) the title of the case as prescribed by  
19 Rule 8003(d)(2) or 8004(c)(2);

20                           (D) the nature of the proceeding and the  
21 name of the court below;

22                           (E) the title of the brief, identifying the

23 party or parties for whom the brief is filed; and  
24 (F) the name, office address, telephone  
25 number, and e-mail address of counsel representing  
26 the party for whom the brief is filed.

27 (3) *Binding*. The brief must be bound in any  
28 manner that is secure, does not obscure the text, and  
29 permits the brief to lie reasonably flat when open.

30 (4) *Paper Size, Line Spacing, and Margins*. The  
31 brief must be on 8½-by-11 inch paper. The text must be  
32 double-spaced, but quotations more than two lines long  
33 may be indented and single-spaced. Headings and  
34 footnotes may be single-spaced. Margins must be at least  
35 one inch on all four sides. Page numbers may be placed in  
36 the margins, but no text may appear there.

37 (5) *Typeface*. Either a proportionally spaced or  
38 monospaced face may be used.

39 (A) A proportionally spaced face must  
40 include serifs, but sans-serif type may be used in  
41 headings and captions. A proportionally spaced  
42 face must be 14-point or larger.

43 (B) A monospaced face may not contain  
44 more than 10½ characters per inch.

45 (6) *Type Styles*. A brief must be set in plain, roman

46 style, although italics or boldface may be used for  
47 emphasis. Case names must be italicized or underlined.

48 (7) *Length.*

49 (A) *Page limitation.* A principal brief must  
50 not exceed 30 pages, or a reply brief 15 pages,  
51 unless it complies with (B) and (C).

52 (B) *Type-volume limitation.*

53 (i) A principal brief is acceptable if:

- 54 • it contains no more  
55 than 14,000 words; or
- 56 • it uses a monospaced  
57 face and contains no more  
58 than 1,300 lines of text.

59 (ii) A reply brief is acceptable if it  
60 contains no more than half of the type  
61 volume specified in item (i).

62 (iii) Headings, footnotes, and  
63 quotations count toward the word and line  
64 limitations. The corporate disclosure  
65 statement, table of contents, table of  
66 citations, statement with respect to oral  
67 argument, any addendum containing  
68 statutes, rules, or regulations, and any

69 certificates of counsel do not count toward  
70 the limitation.

71 (C) *Certificate of Compliance.*

72 (i) A brief submitted under  
73 subdivision (a)(7)(B) must include a  
74 certificate signed by the attorney, or an  
75 unrepresented party, that the brief complies  
76 with the type-volume limitation. The person  
77 preparing the certificate may rely on the  
78 word or line count of the word-processing  
79 system used to prepare the brief. The  
80 certificate must state either:

- 81 • the number of words in the
- 82 brief; or
- 83 • the number of lines of
- 84 monospaced type in the brief.

85 (ii) The certification requirement is  
86 satisfied by a certificate of compliance that  
87 conforms substantially to the appropriate  
88 Official Form.

89 (b) ELECTRONICALLY FILED BRIEFS. A brief filed  
90 electronically must comply with subdivision (a), except for (a)(1),  
91 (a)(3), and the paper requirement of (a)(4).

92 (c) PAPER COPIES OF APPENDICES. A paper copy of  
93 an appendix must comply with subdivision (a)(1), (2), (3), and (4),  
94 with the following exceptions:

95 (1) An appendix may include a legible photocopy  
96 of any document found in the record or of a printed  
97 decision.

98 (2) When necessary to facilitate inclusion of odd-  
99 sized documents such as technical drawings, an appendix  
100 may be a size other than 8½-by-11 inches, and need not lie  
101 reasonably flat when opened.

102 (d) ELECTRONICALLY FILED APPENDICES. An  
103 appendix filed electronically must comply with subdivision (a)(2)  
104 and (4), except for the paper requirement of (a)(4).

105 (e) OTHER DOCUMENTS.

106 (1) *Motion*. Rule 8013(f) governs the form of a  
107 motion, response, or reply.

108 (2) *Paper Copies of Other Documents*. A paper  
109 copy of any other document, other than a submission under  
110 Rule 8014(f), must comply with subdivision (a), with the  
111 following exceptions:

112 (A) A cover is not necessary if the caption  
113 and signature page together contain the information  
114 required by subdivision (a)(2).

115 (B) Subdivision (a)(7) does not apply.

116 (3) *Other Documents Filed Electronically.* Any  
117 other document filed electronically, other than a  
118 submission under Rule 8014(f), must comply with the  
119 appearance requirements of paragraph (2).

120 (f) LOCAL VARIATION. A district court or BAP must  
121 accept documents that comply with the applicable requirements of  
122 this rule. By local rule or order in a particular case, a district court  
123 or BAP may accept documents that do not meet all of the  
124 requirements of this rule.

#### COMMITTEE NOTE

This rule is derived primarily from F.R.App.P. 32. Former Rule 8010(c) prescribed page limits for principal briefs and reply briefs. Those limits are now addressed by subdivision (a)(7) of this rule. In addition, the rule incorporates most of the detail of F.R.App.P. 32 regarding the appearance and format of briefs, appendices, and other documents, along with new provisions that apply when those documents are filed electronically.

Subdivision (a) prescribes the form requirements for briefs that are filed in paper form. It incorporates F.R.App.P. 32(a), except it does not include color requirements for brief covers, it requires the cover of a brief to include counsel's e-mail address, and cross-references to the appropriate bankruptcy rules are substituted for references to the Federal Rules of Appellate Procedure.

Subdivision (a)(7) decreases the page limits that were permitted by former Rule 8010(c)—from 50 to 30 pages for a principal brief and from 25 to 15 for a reply brief—to achieve consistency with F.R.App.P. 32(a)(7). It also permits the limits on the length of a brief to be measured by a word or line count, as an alternative to a page limit. By adopting the same limits on brief length that the Federal Rules of Appellate Procedure impose, the amendment seeks to prevent a party whose case is eventually appealed to the court of appeals from having to substantially reduce the length of its



brief in that court.

Subdivision (b) adapts for briefs that are electronically filed subdivision (a)'s form requirements. With the use of electronic filing, the method of reproduction, method of binding, and use of paper become irrelevant. But information required on the cover, formatting requirements, and limits on brief length remain the same.

Subdivisions (c) and (d) prescribe the form requirements for appendices. Subdivision (c), applicable to paper appendices, is derived from F.R.App.P. 32(b), and subdivision (d) adapts those requirements for electronically filed appendices.

Subdivision (e), which is based on F.R.App.P. 32(c), addresses the form required for documents—in paper form or electronically filed—that these rules do not otherwise cover.

Subdivision (f), like F.R.App.P. 32(e), provides assurance to lawyers and parties that compliance with this rule's form requirements will allow a brief or other document to be accepted by any district court or BAP. A court may, however, by local rule or by order in a particular case choose to accept briefs and documents that do not comply with all of this rule's requirements.

Under Rule 8011(e), the party filing the document or, if represented, its counsel must sign all briefs and other submissions. If the document is filed electronically, an electronic signature must be provided in accordance with Rule 8011(e).

**Rule 8016. Cross-Appeals**

1           (a) APPLICABILITY. This rule applies to a case in which  
2 a cross-appeal is filed. Rules 8014(a)-(c), 8015(a)(7)(A)-(B), and  
3 8018(a) do not apply to such a case, except as otherwise provided  
4 in this rule.

5           (b) DESIGNATION OF APPELLANT. The party who  
6 files a notice of appeal first is the appellant for purposes of this  
7 rule and Rules 8018(b) and 8019. If notices are filed on the same  
8 day, the plaintiff, petitioner, applicant, or movant in the proceeding  
9 below is the appellant. These designations may be modified by the  
10 parties' agreement or by court order.

11           (c) BRIEFS. In a case involving a cross-appeal:

12                   (1) *Appellant's Principal Brief.* The appellant must  
13 file a principal brief in the appeal. That brief must comply  
14 with Rule 8014(a).

15                   (2) *Appellee's Principal and Response Brief.* The  
16 appellee must file a principal brief in the cross-appeal and  
17 must, in the same brief, respond to the principal brief in the  
18 appeal. That brief must comply with Rule 8014(a), except  
19 that the brief need not include a statement of the case  
20 unless the appellee is dissatisfied with the appellant's  
21 statement.

22                   (3) *Appellant's Response and Reply Brief.* The

23 appellant must file a brief that responds to the principal  
24 brief in the cross-appeal and may, in the same brief, reply  
25 to the response in the appeal. That brief must comply with  
26 Rule 8014(a)(2)-(8) and (10), except that none of the  
27 following need appear unless the appellant is dissatisfied  
28 with the appellee's statement in the cross-appeal:

29 (A) the jurisdictional statement;

30 (B) the statement of the issues and the  
31 applicable standard of appellate review; and

32 (C) the statement of the case.

33 (4) *Appellee's Reply Brief*. The appellee may file a  
34 brief in reply to the response in the cross-appeal. That brief  
35 must comply with Rule 8014(a)(2)-(3) and (10) and must  
36 be limited to the issues presented by the cross-appeal.

37 (d) LENGTH.

38 (1) *Page Limitation*. Unless it complies with  
39 paragraphs (2) and (3), the appellant's principal brief must  
40 not exceed 30 pages; the appellee's principal and response  
41 brief, 35 pages; the appellant's response and reply brief, 30  
42 pages; and the appellee's reply brief, 15 pages.

43 (2) *Type-Volume Limitation*.

44 (A) The appellant's principal brief or the  
45 appellant's response and reply brief is acceptable if:

46 (i) it contains no more than 14,000  
47 words; or

48 (ii) it uses a monospaced face and  
49 contains no more than 1,300 lines of text.

50 (B) The appellee's principal and response  
51 brief is acceptable if:

52 (i) it contains no more than 16,500  
53 words; or

54 (ii) it uses a monospaced face and  
55 contains no more than 1,500 lines of text.

56 (C) The appellee's reply brief is acceptable  
57 if it contains no more than half of the type volume  
58 specified in subparagraph (A).

59 (3) *Certificate of Compliance*. A brief submitted  
60 either electronically or in paper form under paragraph (2)  
61 must comply with Rule 8015(a)(7)(C).

62 (e) TIME TO SERVE AND FILE A BRIEF. Briefs must  
63 be served and filed as follows, unless the district court or BAP by  
64 order in a particular case excuses the filing of briefs or specifies  
65 different time limits:

66 (1) the appellant's principal brief, within 30 days  
67 after the docketing of notice that the record has been  
68 transmitted or is available electronically;

69 (2) the appellee's principal and response brief,  
70 within 30 days after the appellant's principal brief is  
71 served;

72 (3) the appellant's response and reply brief, within  
73 30 days after the appellee's principal and response brief is  
74 served; and

75 (4) the appellee's reply brief, within 14 days after  
76 the appellant's response and reply brief is served, but at  
77 least 7 days before scheduled argument unless the district  
78 court or BAP, for good cause, allows a later filing.

79 (f) FAILURE TO FILE ON TIME. If an appellant or  
80 appellee fails to file a principal brief on time, or within an  
81 extended time authorized by the district court or BAP, the appeal  
82 or cross-appeal may be dismissed. Unless the district court or  
83 BAP orders otherwise, an appellee who fails to file a responsive  
84 brief will not be heard at oral argument on the appeal, and an  
85 appellant who fails to file a responsive brief will not be heard at  
86 oral argument on the cross-appeal.

#### **COMMITTEE NOTE**

This rule is derived from F.R.App.P. 28.1. It governs the timing, content, length, filing, and service of briefs in bankruptcy appeals in which there is a cross-appeal. The former Part VIII rules did not separately address the topic of cross-appeals.

Subdivision (b) prescribes which party is designated the appellant

when there is a cross-appeal. Generally, the first to file a notice of appeal will be the appellant.

Subdivision (c) specifies the briefs that the appellant and the appellee may file. Because of the dual role of the parties to the appeal and cross-appeal, each party is permitted to file a principal brief and a response to the opposing party's brief, as well as a reply brief. For the appellee, the principal brief in the cross-appeal and the response in the appeal are combined into a single brief. The appellant, on the other hand, initially files a principal brief in the appeal and later files a response to the appellee's principal brief in the cross-appeal, along with a reply brief in the appeal. The final brief that may be filed is the appellee's reply brief in the cross-appeal.

Subdivision (d), which prescribes page limits for briefs, is adopted from F.R.App.P. 28.1(e). It applies to briefs that are filed electronically, as well as to those filed in paper form. Like Rule 8015(a)(7), it imposes limits measured by either the number of pages or the number of words or lines of text.

Subdivision (e) governs the time for filing briefs in cases in which there is a cross-appeal. It adapts the provisions of F.R.App.P. 28.1(f).

Subdivision (f) authorizes the dismissal of an appeal or cross-appeal if the appellant or cross-appellant fails to timely file a principal brief, and it denies oral argument to a party who fails to file a responsive brief unless the district court or BAP orders otherwise.

**Rule 8017. Brief of an Amicus Curiae**

1           (a) WHEN PERMITTED. The United States or its officer  
2           or agency or a state may file an amicus-curiae brief without the  
3           consent of the parties or leave of court. Any other amicus curiae  
4           may file a brief only by leave of court or if the brief states that all  
5           parties have consented to its filing. On its own motion, and with  
6           notice to all parties to an appeal, the district court or BAP may  
7           request a brief by an amicus curiae.

8           (b) MOTION FOR LEAVE TO FILE. The motion must  
9           be accompanied by the proposed brief and state:

- 10                       (1) the movant’s interest; and  
11                       (2) the reason why an amicus brief is desirable and  
12                       why the matters asserted are relevant to the disposition of  
13                       the appeal.

14           (c) CONTENTS AND FORM. An amicus brief must  
15           comply with Rule 8015. In addition to the requirements of Rule  
16           8015, the cover must identify the party or parties supported and  
17           indicate whether the brief supports affirmance or reversal. If an  
18           amicus curiae is a corporation, the brief must include a disclosure  
19           statement like that required of parties by Rule 8012. An amicus  
20           brief need not comply with Rule 8014, but must include the  
21           following:

- 22                       (1) a table of contents, with page references;

23 (2) a table of authorities—cases (alphabetically  
24 arranged), statutes, and other authorities—with references  
25 to the pages of the brief where they are cited;

26 (3) a concise statement of the identity of the amicus  
27 curiae, its interest in the case, and the source of its  
28 authority to file;

29 (4) unless the amicus curiae is one listed in the first  
30 sentence of subdivision (a), a statement that indicates  
31 whether:

32 (A) a party’s counsel authored the brief in  
33 whole or in part;

34 (B) a party or a party’s counsel contributed  
35 money that was intended to fund preparing or  
36 submitting the brief; and

37 (C) a person—other than the amicus curiae,  
38 its members, or its counsel—contributed money that  
39 was intended to fund preparing or submitting the  
40 brief and, if so, identifies each such person;

41 (5) an argument, which may be preceded by a  
42 summary and need not include a statement of the applicable  
43 standard of review; and

44 (6) a certificate of compliance, if required by Rule  
45 8015(a)(7)(C) or 8015(b).



46 (d) LENGTH. Except by the district court's or BAP's  
47 permission, an amicus brief must be no more than one-half the  
48 maximum length authorized by these rules for a party's principal  
49 brief. If the court grants a party permission to file a longer brief,  
50 that extension does not affect the length of an amicus brief.

51 (e) TIME FOR FILING. An amicus curiae must file its  
52 brief, accompanied by a motion for filing when necessary, no later  
53 than 7 days after the principal brief of the party being supported is  
54 filed. An amicus curiae that does not support either party must file  
55 its brief no later than 7 days after the appellant's principal brief is  
56 filed. The district court or BAP may grant leave for later filing,  
57 specifying the time within which an opposing party may answer.

58 (f) REPLY BRIEF. Except by the district court's or  
59 BAP's permission, an amicus curiae may not file a reply brief.

60 (g) ORAL ARGUMENT. An amicus curiae may  
61 participate in oral argument only with the district court's or BAP's  
62 permission.

#### COMMITTEE NOTE

This rule is derived from F.R.App.P. 29. The former Part VIII rules did not address the participation by an amicus curiae in a bankruptcy appeal.

Subdivision (a) adopts the provisions of F.R.App.P. 29(a). In addition, it authorizes the district court or BAP on its own motion— with notice to the parties—to request the filing of a brief by an amicus curiae.

Subdivisions (b)-(g) adopt F.R.App.P. 29(b)-(g).

**Rule 8018. Serving and Filing Briefs; Appendices**

1           (a) TIME TO SERVE AND FILE A BRIEF. The  
2 following rules apply unless the district court or BAP by order in a  
3 particular case excuses the filing of briefs or specifies different  
4 time limits:

5                   (1) The appellant must serve and file a brief within  
6 30 days after the docketing of notice that the record has  
7 been transmitted or is available electronically.

8                   (2) The appellee must serve and file a brief within  
9 30 days after service of the appellant’s brief.

10                  (3) The appellant may serve and file a reply brief  
11 within 14 days after service of the appellee’s brief, but a  
12 reply brief must be filed at least 7 days before scheduled  
13 argument unless the district court or BAP, for good cause,  
14 allows a later filing.

15                  (4) If an appellant fails to file a brief on time or  
16 within an extended time authorized by the district court or  
17 BAP, the appeal may be dismissed. An appellee who fails  
18 to file a brief will not be heard at oral argument unless the  
19 district court or BAP grants permission.

20           (b) DUTY TO SERVE AND FILE AN APPENDIX TO  
21 THE BRIEF.

22                   (1) *Appellant.* Subject to subdivision (e) and Rule

23 8009(d), the appellant must serve and file with its principal  
24 brief excerpts of the record as an appendix. It must contain  
25 the following:

26 (A) the relevant entries in the bankruptcy  
27 docket;

28 (B) the complaint and answer, or other  
29 equivalent filings;

30 (C) the judgment, order, or decree from  
31 which the appeal is taken;

32 (D) any other orders, pleadings, jury  
33 instructions, findings, conclusions, or opinions  
34 relevant to the appeal;

35 (E) the notice of appeal; and

36 (F) any relevant transcript or portion of it.

37 (2) *Appellee*. The appellee may also serve and file  
38 with its brief an appendix that contains material required to  
39 be included by the appellant or relevant to the appeal or  
40 cross-appeal, but omitted by the appellant.

41 (3) *Cross-Appellee*. The appellant as cross-  
42 appellee may also serve and file with its response an  
43 appendix that contains material relevant to matters raised  
44 initially by the principal brief in the cross-appeal, but  
45 omitted by the cross-appellant.

46                   (c) **FORMAT OF THE APPENDIX.** The appendix must  
47 begin with a table of contents identifying the page at which each  
48 part begins. The relevant docket entries must follow the table of  
49 contents. Other parts of the record must follow chronologically.  
50 When pages from the transcript of proceedings are placed in the  
51 appendix, the transcript page numbers must be shown in brackets  
52 immediately before the included pages. Omissions in the text of  
53 documents or of the transcript must be indicated by asterisks.  
54 Immaterial formal matters (captions, subscriptions,  
55 acknowledgments, and the like) should be omitted.

56                   (d) **EXHIBITS.** Exhibits designated for inclusion in the  
57 appendix may be reproduced in a separate volume or volumes,  
58 suitably indexed.

59                   (e) **APPEAL ON THE ORIGINAL RECORD WITHOUT**  
60 **AN APPENDIX.** The district court or BAP may, either by rule for  
61 all cases or classes of cases or by order in a particular case,  
62 dispense with the appendix and permit an appeal to proceed on the  
63 original record, with the submission of any relevant parts of the  
64 record that the district court or BAP orders the parties to file.

## COMMITTEE NOTE

This rule is derived from former Rule 8009 and F.R.App.P. 30 and 31. Like former Rule 8009, it addresses the timing of serving and filing briefs and appendices, as well as the content and format of appendices. Rule 8011 governs the methods of filing and serving briefs and appendices.

The rule retains the bankruptcy practice of permitting the appellee to file its own appendix, rather than requiring the appellant to include in its appendix matters designated by the appellee. Rule 8016 governs the timing of serving and filing briefs when a cross-appeal is taken. This rule's provisions about appendices apply to all appeals, including cross-appeals.

Subdivision (a) retains former Rule 8009's provision that allows the district court or BAP to dispense with briefing or to provide different time periods than this rule specifies. It increases some of the time periods for filing briefs from the periods prescribed by the former rule, while still retaining shorter time periods than some provided by F.R.App.P. 31(a). The time for filing the appellant's brief is increased from 14 to 30 days after the docketing of the notice of the transmission of the record or notice of the availability of the record. That triggering event is equivalent to docketing the appeal under former Rule 8007. Appellate Rule 31(a)(1), by contrast, provides the appellant 40 days after the record is filed to file its brief. The shorter time period for bankruptcy appeals reflects the frequent need for greater expedition in the resolution of bankruptcy appeals, while still providing the appellant more time to prepare its brief than the former rule provided.

Subdivision (a)(2) similarly expands the time period for filing the appellee's brief from 14 to 30 days after the service of the appellant's brief. This period is the same as F.R. App. 31(a)(1) provides.

Subdivision (a)(3) retains the 14-day time period for filing a reply brief that the former rule prescribed, but it qualifies that period to ensure that the final brief is filed at least 7 days before oral argument.

If a district court or BAP has a mediation procedure for bankruptcy appeals, that procedure could affect when briefs must be filed. *See* Rule 8027.

Subdivision (a)(4) is new. Based on F.R.App.P. 31(c), it provides for actions that may be taken—dismissal of the appeal or denial of participation in oral argument—if the appellant or appellee fails to file its brief.

Subdivisions (b) and (c) govern the content and format of the

appendix to a brief. Subdivision (b) is similar to former Rule 8009(b), and subdivision (c) is derived from F.R.App.P. 30(d).

Subdivision (d), which addresses the inclusion of exhibits in the appendix, is derived from F.R.App.P. 30(e).

**Rule 8019. Oral Argument**

1           (a) PARTY’S STATEMENT. Any party may file, or a  
2           district court or BAP may require, a statement explaining why oral  
3           argument should, or need not, be permitted.

4           (b) PRESUMPTION OF ORAL ARGUMENT AND  
5           EXCEPTIONS. Oral argument must be allowed in every case  
6           unless the district judge—or all the BAP judges assigned to hear  
7           the appeal—examine the briefs and record and determine that oral  
8           argument is unnecessary because

- 9                           (1) the appeal is frivolous;
- 10                          (2) the dispositive issue or issues have been  
11                          authoritatively decided; or
- 12                          (3) the facts and legal arguments are adequately  
13                          presented in the briefs and record, and the decisional  
14                          process would not be significantly aided by oral argument.

15           (c) NOTICE OF ARGUMENT; POSTPONEMENT. The  
16           district court or BAP must advise all parties of the date, time, and  
17           place for oral argument, and the time allowed for each side. A  
18           motion to postpone the argument or to allow longer argument must  
19           be filed reasonably in advance of the hearing date.

20           (d) ORDER AND CONTENTS OF ARGUMENT. The  
21           appellant opens and concludes the argument. Counsel must not  
22           read at length from briefs, the record, or authorities.

23                   (e) CROSS-APPEALS AND SEPARATE APPEALS. If  
24 there is a cross-appeal, Rule 8016(b) determines which party is the  
25 appellant and which is the appellee for the purposes of oral  
26 argument. Unless the district court or BAP directs otherwise, a  
27 cross-appeal or separate appeal must be argued when the initial  
28 appeal is argued. Separate parties should avoid duplicative  
29 argument.

30                   (f) NONAPPEARANCE OF A PARTY. If the appellee  
31 fails to appear for argument, the district court or BAP may hear the  
32 appellant's argument. If the appellant fails to appear for argument,  
33 the district court or BAP may hear the appellee's argument. If  
34 neither party appears, the case will be decided on the briefs unless  
35 the district court or BAP orders otherwise.

36                   (g) SUBMISSION ON BRIEFS. The parties may agree to  
37 submit a case for decision on the briefs, but the district court or  
38 BAP may direct that the case be argued.

39                   (h) USE OF PHYSICAL EXHIBITS AT ARGUMENT;  
40 REMOVAL. Counsel intending to use physical exhibits other than  
41 documents at the argument must arrange to place them in the  
42 courtroom on the day of the argument before the court convenes.  
43 After the argument, counsel must remove the exhibits from the  
44 courtroom unless the district court or BAP directs otherwise. The  
45 clerk may destroy or dispose of the exhibits if counsel does not



46           reclaim them within a reasonable time after the clerk gives notice  
47           to remove them.

### **COMMITTEE NOTE**

This rule generally retains the provisions of former Rule 8012 and adds much of the additional detail of F.R.App.P. 34. By incorporating the more detailed provisions of the appellate rule, Rule 8019 promotes national uniformity regarding oral argument in bankruptcy appeals.

Subdivision (a), like F.R.App.P. 34(a)(1), now allows a party to submit a statement explaining why oral argument is or is not needed. It also authorizes a court to require this statement. Former Rule 8012 only authorized statements explaining why oral argument should be allowed.

Subdivision (b) retains the reasons set forth in former Rule 8012 for the district court or BAP to conclude that oral argument is not needed.

The remainder of this rule adopts the provisions of F.R.App.P. 34(b)-(g), with one exception. Rather than requiring the district court or BAP to hear appellant's argument if the appellee does not appear, subdivision (e) authorizes the district court or BAP to go forward with the argument in the appellee's absence. Should the court decide, however, to postpone the oral argument in that situation, it would be authorized to do so.

## **Rule 8020. Frivolous Appeal and Other Misconduct**

1           (a) FRIVOLOUS APPEAL—DAMAGES AND COSTS.  
2           If the district court or BAP determines that an appeal is frivolous,  
3           it may, after a separately filed motion or notice from the court and  
4           reasonable opportunity to respond, award just damages and single  
5           or double costs to the appellee.

6           (b) OTHER MISCONDUCT. The district court or BAP  
7           may discipline or sanction an attorney or party appearing before it  
8           for other misconduct, including failure to comply with any court  
9           order. First, however, the court must afford the attorney or party  
10          reasonable notice, an opportunity to show cause to the contrary,  
11          and, if requested, a hearing.

### **COMMITTEE NOTE**

This rule is derived from former Rule 8020 and F.R.App.P. 38 and 46(c). Subdivision (a) permits an award of damages and costs to an appellee for a frivolous appeal. Subdivision (b) permits the district court or BAP to impose on parties as well as their counsel sanctions for misconduct other than taking a frivolous appeal. Failure to comply with a court order, for which sanctions may be imposed, may include a failure to comply with a local court rule.

**Rule 8021. Costs**

1           (a) AGAINST WHOM ASSESSED. The following rules  
2 apply unless the law provides or the district court or BAP orders  
3 otherwise:

4                   (1) if an appeal is dismissed, costs are taxed against  
5 the appellant, unless the parties agree otherwise;

6                   (2) if a judgment, order, or decree is affirmed, costs  
7 are taxed against the appellant;

8                   (3) if a judgment, order, or decree is reversed, costs  
9 are taxed against the appellee;

10                   (4) if a judgment, order, or decree is affirmed or  
11 reversed in part, modified, or vacated, costs are taxed only  
12 as the district court or BAP orders.

13           (b) COSTS FOR AND AGAINST THE UNITED  
14 STATES. Costs for or against the United States, its agency, or its  
15 officer may be assessed under subdivision (a) only if authorized  
16 by law.

17           (c) COSTS ON APPEAL TAXABLE IN THE  
18 BANKRUPTCY COURT. The following costs on appeal are  
19 taxable in the bankruptcy court for the benefit of the party entitled  
20 to costs under this rule:

21                   (1) the production of any required copies of a brief,  
22 appendix, exhibit, or the record;

23 (2) the preparation and transmission of the record;

24 (3) the reporter's transcript, if needed to determine

25 the appeal;

26 (4) premiums paid for a supersedeas bond or other

27 bonds to preserve rights pending appeal; and

28 (5) the fee for filing the notice of appeal.

29 (d) BILL OF COSTS; OBJECTIONS. A party who wants

30 costs taxed must, within 14 days after entry of judgment on appeal,

31 file with the bankruptcy clerk, with proof of service, an itemized

32 and verified bill of costs. Objections must be filed within 14 days

33 after service of the bill of costs, unless the bankruptcy court

34 extends the time.

### COMMITTEE NOTE

This rule is derived from former Rule 8014 and F.R.App.P. 39. It retains the former rule's authorization for taxing appellate costs against the losing party and its specification of the costs that may be taxed. The rule also incorporates some of the additional details regarding the taxing of costs contained in F.R.App.P. 39. Consistent with former Rule 8014, the bankruptcy clerk has the responsibility for taxing all costs. Subdivision (b), derived from F.R.App.P. 39(b), clarifies that additional authority is required for the taxation of costs by or against federal governmental parties.

**Rule 8022. Motion for Rehearing.**

1           (a) TIME TO FILE; CONTENTS; RESPONSE; ACTION  
2 BY THE DISTRICT COURT OR BAP IF GRANTED.

3           (1) *Time.* Unless the time is shortened or extended  
4 by order or local rule, any motion for rehearing by the  
5 district court or BAP must be filed within 14 days after  
6 entry of judgment on appeal.

7           (2) *Contents.* The motion must state with  
8 particularity each point of law or fact that the movant  
9 believes the district court or BAP has overlooked or  
10 misapprehended and must argue in support of the motion.  
11 Oral argument is not permitted.

12           (3) *Response.* Unless the district court or BAP  
13 requests, no response to a motion for rehearing is  
14 permitted. But ordinarily, rehearing will not be granted in  
15 the absence of such a request.

16           (4) *Action by the District Court or BAP.* If a  
17 motion for rehearing is granted, the district court or BAP  
18 may do any of the following:

19                   (A) make a final disposition of the appeal  
20 without reargument;

21                   (B) restore the case to the calendar for  
22 reargument or resubmission; or

23 (C) issue any other appropriate order.

24 (b) FORM OF THE MOTION; LENGTH. The motion  
25 must comply in form with Rule 8013(f)(1) and (2). Copies must  
26 be served and filed as provided by Rule 8011. Unless the district  
27 court or BAP by local rule or order provides otherwise, a motion  
28 for rehearing must not exceed 15 pages.

#### **COMMITTEE NOTE**

This rule is derived from former Rule 8015 and F.R.App.P. 40. It deletes the provision of former Rule 8015 regarding the time for appeal to the court of appeals because the matter is addressed by F.R.App.P. 6(b)(2)(A).

### **Rule 8023. Voluntary Dismissal**

1           The clerk of the district court or BAP must dismiss an  
2           appeal if the parties file a signed dismissal agreement specifying  
3           how costs are to be paid and pay any fees that are due. An appeal  
4           may be dismissed on the appellant’s motion on terms agreed to by  
5           the parties or fixed by the district court or BAP.

### **COMMITTEE NOTE**

This rule is derived from former Rule 8001(c) and F.R.App.P. 42. The provision of the former rule regarding dismissal of appeals in the bankruptcy court prior to docketing of the appeal has been deleted. Now that docketing occurs promptly after a notice of appeal is filed, *see* Rules 8003(d) and 8004(c), an appeal likely will not be voluntarily dismissed before docketing.

The rule retains the provision of the former rule that the district or BAP clerk must dismiss an appeal upon the parties’ agreement. District courts and BAPs continue to have discretion to dismiss an appeal on an appellant’s motion. Nothing in the rule prohibits a district court or BAP from dismissing an appeal for other reasons authorized by law, such as the failure to prosecute an appeal.

**Rule 8024. Clerk’s Duties on Disposition of the Appeal**

1           (a) JUDGMENT ON APPEAL. The district or BAP clerk  
2           must prepare, sign, and enter the judgment after receiving the  
3           court’s opinion or, if there is no opinion, as the court instructs.  
4           Noting the judgment on the docket constitutes entry of judgment.

5           (b) NOTICE OF A JUDGMENT. Immediately upon the  
6           entry of a judgment, the district or BAP clerk must:

7                       (1) transmit a notice of the entry to each party to  
8                       the appeal, to the United States trustee, and to the  
9                       bankruptcy clerk, together with a copy of any opinion; and

10                      (2) note the date of the transmission on the docket.

11           (c) RETURNING ORIGINAL DOCUMENTS. If any  
12           original documents were transmitted as the record on appeal, they  
13           must be returned to the bankruptcy clerk on disposition of the  
14           appeal.

**COMMITTEE NOTE**

This rule is derived from former Rule 8016, which was adapted from F.R.App.P. 36 and 45(c) and (d). The rule is reworded to reflect that the record often will not be physically transmitted to the district court or BAP and thus there will be no documents to return to the bankruptcy clerk. Other changes to the former rule are stylistic.



**Rule 8025. Stay of a District Court or BAP Judgment**

1 (a) AUTOMATIC STAY OF JUDGMENT ON APPEAL.

2 Unless the district court or BAP orders otherwise, its judgment is  
3 stayed for 14 days after entry.

4 (b) STAY PENDING APPEAL TO THE COURT OF  
5 APPEALS.

6 (1) *In General.* On a party’s motion and notice to  
7 all other parties to the appeal, the district court or BAP may  
8 stay its judgment pending an appeal to the court of appeals.

9 (2) *Time Limit.* The stay must not exceed 30 days  
10 after the judgment is entered, except for cause shown.

11 (3) *Stay Continued.* If, before a stay expires, the  
12 party who obtained the stay appeals to the court of appeals,  
13 the stay continues until final disposition by the court of  
14 appeals.

15 (4) *Bond or Other Security.* A bond or other  
16 security may be required as a condition for granting or  
17 continuing a stay of the judgment. A bond or other security  
18 may be required if a trustee obtains a stay, but not if a stay  
19 is obtained by the United States or its officer or agency or  
20 at the direction of any department of the United States  
21 government.

22 (c) AUTOMATIC STAY OF AN ORDER, JUDGMENT,

23 OR DECREE OF A BANKRUPTCY COURT. If the district court  
24 or BAP enters a judgment affirming an order, judgment, or decree  
25 of the bankruptcy court, a stay of the district court's or BAP's  
26 judgment automatically stays the bankruptcy court's order,  
27 judgment, or decree for the duration of the appellate stay.

28 (d) POWER OF A COURT OF APPEALS NOT  
29 LIMITED. This rule does not limit the power of a court of appeals  
30 or any of its judges to do the following:

- 31 (1) stay a judgment pending appeal;  
32 (2) stay proceedings while an appeal is pending;  
33 (3) suspend, modify, restore, vacate, or grant a stay  
34 or an injunction while an appeal is pending; or  
35 (4) issue any order appropriate to preserve the  
36 status quo or the effectiveness of any judgment to be  
37 entered.

#### COMMITTEE NOTE

This rule is derived from former Rule 8017. Most of the changes to the former rule are stylistic. Subdivision (c) is new. It provides that if a district court or BAP affirms the bankruptcy court ruling and the appellate judgment is stayed, the bankruptcy court's order, judgment, or decree that is affirmed on appeal is automatically stayed to the same extent as the stay of the appellate judgment.

**Rule 8026. Rules by Circuit Councils and District Courts;  
Procedure When There is No Controlling Law**

1           (a) LOCAL RULES BY CIRCUIT COUNCILS AND  
2 DISTRICT COURTS.

3                   (1) *Adopting Local Rules.* A circuit council that  
4 has authorized a BAP under 28 U.S.C. § 158(b) may make  
5 and amend rules governing the practice and procedure on  
6 appeal from a judgment, order, or decree of a bankruptcy  
7 court to the BAP. A district court may make and amend  
8 rules governing the practice and procedure on appeal from  
9 a judgment, order, or decree of a bankruptcy court to the  
10 district court. Local rules must be consistent with, but not  
11 duplicative of, Acts of Congress and these Part VIII rules.  
12 Rule 83 F.R.Civ.P. governs the procedure for making and  
13 amending rules to govern appeals.

14                   (2) *Numbering.* Local rules must conform to any  
15 uniform numbering system prescribed by the Judicial  
16 Conference of the United States.

17                   (3) *Limitation on Imposing Requirements of Form.*  
18 A local rule imposing a requirement of form must not be  
19 enforced in a way that causes a party to lose any right  
20 because of a nonwillful failure to comply.

21           (b) PROCEDURE WHEN THERE IS NO  
22 CONTROLLING LAW.

23                           (1) *In General.* A district court or BAP may  
24 regulate practice in any manner consistent with federal law,  
25 applicable federal rules, the Official Forms, and local rules.

26                           (2) *Limitation on Sanctions.* No sanction or other  
27 disadvantage may be imposed for noncompliance with any  
28 requirement not in federal law, applicable federal rules, the  
29 Official Forms, or local rules unless the alleged violator has  
30 been furnished in the particular case with actual notice of  
31 the requirement.

**COMMITTEE NOTE**

This rule is derived from former Rule 8018. The changes to the former rule are stylistic.

**Rule 8027. Notice of a Mediation Procedure**

1            If the district court or BAP has a mediation procedure  
2            applicable to bankruptcy appeals, the clerk must notify the parties  
3            promptly after docketing the appeal of:  
4            (a) the requirements of the mediation procedure; and  
5            (b) any effect the mediation procedure has on the time to  
6            file briefs.

**COMMITTEE NOTE**

This rule is new. It requires the district or BAP clerk to advise the parties promptly after an appeal is docketed of any court mediation procedure that is applicable to bankruptcy appeals. The notice must state what the mediation requirements are and how the procedure affects the time for filing briefs.

### **Rule 8028. Suspension of Rules in Part VIII**

1           In the interest of expediting decision or for other cause in a  
2           particular case, the district court or BAP, or where appropriate the  
3           court of appeals, may suspend the requirements or provisions of  
4           the rules in Part VIII, except Rules 8001, 8002, 8003, 8004, 8005,  
5           8006, 8007, 8012, 8020, 8024, 8025, 8026, and 8028.

#### **COMMITTEE NOTE**

This rule is derived from former Rule 8019 and F.R.App.P. 2. To promote uniformity of practice and compliance with statutory authority, the rule includes a more extensive list of requirements that may not be suspended than either the former rule or the Federal Rules of Appellate Procedure provide. Rules governing the following matters may not be suspended:

- scope of the rules; definition of “BAP”; method of transmission;
- time for filing a notice of appeal;
- taking an appeal as of right;
- taking an appeal by leave;
- election to have an appeal heard by a district court instead of a BAP;
- certification of direct appeal to a court of appeals;
- stay pending appeal;
- corporate disclosure statement;
- sanctions for frivolous appeals and other misconduct;
- clerk’s duties on disposition of an appeal;
- stay of a district court’s or BAP’s judgment;
- local rules; and
- suspension of the Part VIII rules.

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(If known)

Check if this is an amended filing

# Official Form 3A

## Application for Individuals to Pay the Filing Fee in Installments

12/13

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information.

**Part 1: Specify Your Proposed Payment Timetable**

1. Which chapter of the Bankruptcy Code are you choosing to file under?

- Chapter 7..... Fee: **\$306**
- Chapter 11..... Fee: **\$1,046**
- Chapter 12..... Fee: **\$246**
- Chapter 13..... Fee: **\$281**

2. You may apply to pay the filing fee in up to four installments. Fill in the amounts you propose to pay and the dates you plan to pay them. Be sure all dates are business days. Then add the payments you propose to pay.

You must propose to pay the entire fee no later than 120 days after you first file for bankruptcy. If necessary, you may ask the court to extend the deadline to 180 days after you file. In that case, you must explain why you need the extension. If the court approves your application, the court will set your final payment timetable.

You propose to pay...

\$ _____	<input type="checkbox"/> With the filing of the petition	_____
	<input type="checkbox"/> On or before this date.....	MM / DD / YYYY
\$ _____	On or before this date.....	_____
		MM / DD / YYYY
\$ _____	On or before this date.....	_____
		MM / DD / YYYY
+ \$ _____	On or before this date.....	_____
		MM / DD / YYYY

**Total**

\$ \_\_\_\_\_

◀ Your total must equal the entire fee for the chapter you checked in line 1.

**Part 2: Sign Here**

By signing here, you state that you are unable to pay the full filing fee at once, that you want to pay the fee in installments, and that you understand that:

- You must pay your entire filing fee before you make any more payments or transfer any more property to an attorney, bankruptcy petition preparer, or anyone else in connection with your bankruptcy case.
- You must pay the entire fee no later than 120 days after you first file for bankruptcy, unless the court extends your deadline to 180 days. Your debts will not be discharged until your entire fee is paid.
- If you do not make any payment when it is due, your bankruptcy case may be dismissed, and your rights in other bankruptcy proceedings may be affected.

\_\_\_\_\_  
Signature of Debtor 1

\_\_\_\_\_  
Signature of Debtor 2

\_\_\_\_\_  
Your attorney's name and signature, if you used one

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

**Fill in this information to identify the case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number (if known): \_\_\_\_\_  
 Chapter 7  
 Chapter 11  
 Chapter 12  
 Chapter 13

## Order Approving Payment of Filing Fee in Installments

After considering the *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 3A), the court orders that:

The debtor(s) may pay the filing fee in installments on the terms proposed in the application.

The debtor(s) must pay the filing fee according to the following terms:

You must pay...	On or before this date...
\$ _____	_____ Month / day / year
\$ _____	_____ Month / day / year
\$ _____	_____ Month / day / year
+ \$ _____	_____ Month / day / year
<b>Total</b>	<input type="text"/>

Until the filing fee is paid in full, the debtor(s) must not make any additional payment or transfer any additional property to an attorney or to anyone else for services in connection with this case.

\_\_\_\_\_  
Month / day / year

**By the court:** \_\_\_\_\_  
United States Bankruptcy Judge



## Official Form 3A

# Instructions for the Application for Individuals to Pay the Filing Fee in Installments

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United States Bankruptcy Court

12/01/13

### How to Fill Out the Application

If you cannot afford to pay the full filing fee when you first file for bankruptcy, you may pay the fee in installments. However, in most cases, you must pay the entire fee within 120 days after you file, and the court must approve your payment timetable. Your debts will not be discharged until you pay your entire fee.

Do not file this form if you can afford to pay your full fee when you file.

If you are filing under chapter 7 and cannot afford to pay the full filing fee at all, you may be qualified to ask the court to waive your filing fee. See *Application to Have Your Chapter 7 Filing Fee Waived* (Official Form 3B).

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out the *Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer* (Official Form 19); include a copy of it in this package.

### Things to remember when filling out this form

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

### **COMMITTEE NOTE**

This form, which applies only in cases of individual debtors, has been revised as part of the Forms Modernization Project, making the form easier to read and, as a result, likely to generate more complete and accurate responses. Also, the declaration and signature section for a non-attorney bankruptcy petition preparer (BPP) has been removed as unnecessary. The same declaration, required under 11 U.S.C. § 110, is contained in Official Form 19. That form must be completed and signed by the BPP, and filed with each document for filing prepared by a BPP.

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(If known)

Check if this is an amended filing

**Official Form 3B**

**Application to Have the Chapter 7 Filing Fee Waived**

12/13

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Tell the Court About Your Family and Your Family's Income**

**1. What is the size of your family?**

Your family includes you, your spouse, and any dependents listed on *Schedule J: Current Expenditures of Individual Debtor(s)* (Official Form 6J).

\_\_\_\_\_ Number of people

Check all that apply.

- You  
 Your spouse  
 Your dependents \_\_\_\_\_

How many dependents?

**2. Fill in your family's average monthly income.**

Include your spouse's income if your spouse is living with you, even if your spouse is not filing.

Do not include your spouse's income if you are separated and your spouse is not filing with you.

Do not include non-cash governmental assistance such as food stamps or housing subsidies.

Person in your family	That person's average monthly net income (take-home pay)
You	\$ _____
Your spouse	+ \$ _____
Total	\$ _____

Add your income and your spouse's income or copy line 10 of *Schedule I: Your Income*, if you have already filled it out.

**Your family's average monthly net income**

**3. Do you receive any non-cash governmental assistance not included in your answer on line 2?**

- No  
 Yes. Explain. ....

Type of assistance	Monthly dollar value
_____	\$ _____

**4. Do you expect your family's average monthly net income to increase or decrease by more than 10% during the next 6 months?**

- No  
 Yes. Explain. ....

\_\_\_\_\_

**5. Tell the court why you are unable to pay the filing fee in installments within 120 days.**

\_\_\_\_\_

**Part 2: Tell the Court About Your Monthly Expenses**

**6. Estimate your average monthly expenses.** \$ \_\_\_\_\_ You may use *Schedule J: Your Expenses* to determine your estimation. If you have already filled out *Schedule J*, copy line 22.

**7. Do these expenses cover anyone who is not included in your family as reported in line 1?**  
 No  
 Yes. Identify who.... \_\_\_\_\_

**8. Does anyone other than you regularly pay any of these expenses?**  
 No  
 Yes. Identify who..... \_\_\_\_\_  
 How much does this person regularly pay? \$ \_\_\_\_\_ monthly  
 List any contributions to expenses you have or will list in line 11 of *Schedule I: Your Income*.

**9. Do you expect your average monthly expenses to increase or decrease by more than 10% during the next 6 months?**  
 No  
 Yes. Explain ..... \_\_\_\_\_

**Part 3: Tell the Court About Your Property**

If you have already filled out *Schedule A: Real Property (Official Form 6A)* and *Schedule B: Personal Property (Official Form 6B)*, attach copies to this application and go to Part 4.

**10. How much cash do you have?**  
*Examples: Money you have in your wallet, in your home, and on hand when you file this application*  
 Cash: \$ \_\_\_\_\_

**11. Bank accounts and other deposits of money?**  
*Examples: Checking, savings, money market, or other financial accounts; certificates of deposit; shares in banks, credit unions, brokerage houses, and other similar institutions. If you have more than one account with the same institution, list each. Do not include 401(k) and IRA accounts.*

	Institution name:	Amount:
Checking account:	_____	\$ _____
Savings account:	_____	\$ _____
Other financial accounts:	_____	\$ _____
Other financial accounts:	_____	\$ _____

**12. Your home?** (if you own it outright or are purchasing it)  
*Examples: House, condominium, manufactured home, or mobile home*

Number	Street	Current value:	\$ _____
_____	_____	Amount you owe on mortgage and liens:	\$ _____
City	State	ZIP Code	

**13. Other real estate?**

Number	Street	Current value:	\$ _____
_____	_____	Amount you owe on mortgage and liens:	\$ _____
City	State	ZIP Code	

**14. The vehicles you own?**  
*Examples: Cars, vans, trucks, sports utility vehicles, motorcycles, tractors, boats*

Make: _____	Current value:	\$ _____
Model: _____	Amount you owe on liens:	\$ _____
Year: _____		
Mileage: _____		
Make: _____	Current value:	\$ _____
Model: _____	Amount you owe on liens:	\$ _____
Year: _____		
Mileage: _____		

<b>15. Other assets?</b> Do not include household items and clothing.	<b>Describe the other assets:</b>   	Current value: \$ _____ Amount you owe on liens: \$ _____
--	---	--

<b>16. Money or property due you?</b> <i>Examples:</i> Tax refunds, past due or lump sum alimony, spousal support, child support, maintenance, divorce or property settlements, Social Security benefits, Workers' compensation, personal injury recovery	<b>Who owes you the money or property?</b> _____ _____	<b>How much is owed?</b> \$ _____ \$ _____	Do you believe you will likely receive payment in the next 3 or 4 months? <input type="checkbox"/> No <input type="checkbox"/> Yes. Explain: <div style="border: 1px solid black; height: 50px; width: 100%;"></div>
--	--	--	---

**Part 4: Answer These Additional Questions**

<b>17. Have you paid anyone for services for this case, including filling out this application, the bankruptcy filing package, or the schedules?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes. <b>Whom did you pay?</b> <input type="checkbox"/> An attorney <input type="checkbox"/> A bankruptcy petition preparer, paralegal, or typing service <input type="checkbox"/> Someone else _____	<b>How much did you pay?</b> \$ _____
--	---	--

<b>18. Have you promised to pay or do you expect to pay someone for services for your bankruptcy case?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes. <b>Whom do you expect to pay?</b> <input type="checkbox"/> An attorney <input type="checkbox"/> A bankruptcy petition preparer, paralegal, or typing service <input type="checkbox"/> Someone else _____	<b>How much do you expect to pay?</b> \$ _____
--	--	---

<b>19. Has anyone paid someone on your behalf for services for this case?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes. <b>Who was paid on your behalf?</b> <input type="checkbox"/> An attorney <input type="checkbox"/> A bankruptcy petition preparer, paralegal, or typing service <input type="checkbox"/> Someone else _____	<b>Who paid?</b> <input type="checkbox"/> Parent <input type="checkbox"/> Brother or sister <input type="checkbox"/> Friend <input type="checkbox"/> Pastor or clergy <input type="checkbox"/> Someone else _____	<b>How much did someone else pay?</b> \$ _____
---	--	--	---

<b>20. Have you, your spouse, or both of you filed for bankruptcy within the last 8 years?</b>	<input type="checkbox"/> No		
	<input type="checkbox"/> Yes. District _____	When _____	Case number _____
		MM/DD/YYYY	
	District _____	When _____	Case number _____
		MM/DD/YYYY	
	District _____	When _____	Case number _____
		MM/DD/YYYY	

**Part 5: Sign Here**

**By signing here under penalty of perjury, I declare that I cannot afford to pay the filing fee either in full or in installments. I also declare that the information I provided in this application is true and correct.**

<b>x</b> _____ Signature of Debtor 1	<b>x</b> _____ Signature of Debtor 2
Date _____ MM / DD / YYYY	Date _____ MM / DD / YYYY

**Fill in this information to identify the case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
 (Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
 (if known)

## Order on the Application to Have the Chapter 7 Filing Fee Waived

After considering the debtor's *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 3B), the court orders that the application is:

- Granted.** However, the court may order the debtor to pay the fee in the future if developments in administering the bankruptcy case show that the waiver was unwarranted.
- Denied.** The debtor must pay the \$306 filing fee according to the following terms:

You must pay...	On or before this date...
\$ _____.	_____ Month / day / year
\$ _____.	_____ Month / day / year
\$ _____.	_____ Month / day / year
+ \$ _____.	_____ Month / day / year
<b>Total</b>	<b>\$ 306.00</b>

If the debtor would like to propose a different payment timetable, the debtor must file a motion promptly with a payment proposal. The debtor may use *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 3A) for this purpose. The court will consider it.

The debtor must pay the entire filing fee before making any more payments or transferring any more property to an attorney, bankruptcy petition preparer, or anyone else in connection with the bankruptcy case. The debtor must also pay the entire filing fee to receive a discharge. If the debtor does not make any payment when it is due, the bankruptcy case may be dismissed and the debtor's rights in future bankruptcy cases may be affected.

**Scheduled for hearing.**

A hearing to consider the debtor's application will be held

on \_\_\_\_\_ at \_\_\_\_\_:\_\_\_\_\_ AM/PM at \_\_\_\_\_.  
Month / day / year Address of courthouse

If the debtor does not appear at this hearing, the court may deny the application.

\_\_\_\_\_  
Month / day / year

**By the court:** \_\_\_\_\_  
United States Bankruptcy Judge

## Official Form 3B

# Instructions for the Application to Have the Chapter 7 Filing Fee Waived

United States Bankruptcy Court

12/01/2013

### How to Fill Out the Application

The fee for filing a bankruptcy case under Chapter 7 is \$306. If you cannot afford to pay the entire fee now in full or in installments within 120 days, use this form. If you can afford to pay your filing fee in installments, see *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 3A).

If you file this form, you are asking the court to waive your fee. After reviewing your application, the court may waive your fee, set a hearing for further investigation, or require you to pay the fee in installments or in full.

#### **For your fee to be waived, all of these statements must be true:**

- You are filing for bankruptcy under Chapter 7.
- You are an individual.
- The total combined monthly income for your family is less than 150% of the official poverty guideline last published by the U.S. Department of Health and Human Services (DHHS). (For more information about the guidelines, go to <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/PovertyGuidelines.aspx>.)
- You cannot afford to pay the fee in installments.

*Your family* includes you, your spouse, and any dependents listed on *Schedule J*. Your family may be different from your *household*, referenced on *Schedules I* and *J*. Your household may include your unmarried partner and others who live with you and with whom you share income and expenses.

If a bankruptcy petition preparer helped you complete this

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

form, make sure that person fills out *Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer* (Official Form 19); include a copy of it in this package.

If you have already completed the following forms, the information on them may help you when you fill out this application:

- *Schedule A: Real Property* (Official Form 6A)
- *Schedule I: Your Income* (Official Form 6I)
- *Schedule J: Your Expenses* (Official Form J)

### Understand the terms used in this form

The *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 3B) uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

### Things to remember when filling out this form

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.

### **COMMITTEE NOTE**

This form, which applies only in cases of individual debtors, has been revised as part of the Forms Modernization Project, making the form easier to read and, as a result, likely to generate more complete and accurate responses. Additionally, in calculating the income that determines the debtor's initial eligibility for a fee waiver, line 2 of the form now directs the debtor to exclude non-cash governmental assistance, such as food stamps and housing subsidies. However, because non-cash governmental assistance may be relevant in evaluating the additional requirement that the debtor be unable to pay the filing fee, the nature and amount of any such assistance is to be reported separately on line 3. Also, the declaration and signature section for a non-attorney bankruptcy petitioner preparer (BPP) has been removed as unnecessary. The same declaration, required under 11 U.S.C. § 110, is contained in Official Form 19. That form must be completed and signed by the BPP, and filed with each document for filing prepared by a BPP.



**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(If known)

Check if this is an amended filing

**Official Form 6I**  
**Schedule I: Your Income**

12/13

**Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.**

**Part 1: Describe Employment**

**1. Fill in your employment information.**

If you have more than one job, attach a separate page with information about additional employers.

Include employment information about a non-filing spouse unless you are separated.

Include part-time, seasonal, or self-employed work.

Occupation should include student or homemaker, if it applies.

	Debtor 1	Debtor 2 or non-filing spouse
<b>Employment status</b>	Employed Not employed	Employed Not employed
<b>Occupation</b>	_____	_____
<b>Employer's name</b>	_____	_____
<b>Employer's address</b>	Number Street _____ _____ City State ZIP Code	Number Street _____ _____ City State ZIP Code
<b>How long employed there?</b>	_____	_____

**Part 2: Give Details About Monthly Income**

**Estimate monthly income as of the date you file this form.** If you have nothing to report for any line, write \$0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

	For Debtor 1	For Debtor 2 or non-filing spouse
2. <b>List monthly gross wages, salary, and commissions</b> (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.	2. \$ _____	\$ _____
3. <b>Estimate and list monthly overtime pay, if any.</b>	3. + \$ _____	+ \$ _____
4. <b>Calculate gross income.</b> Add line 2 + line 3.	4. \$ _____	\$ _____

Copy line 4 here..... → 4.

For Debtor 1	For Debtor 2 or non-filing spouse
\$ _____	\$ _____

5. List all payroll deductions:

5a. Payroll taxes and social security payments	5a.	\$ _____	\$ _____
5b. Contributions for retirement plans	5b.	\$ _____	\$ _____
5c. Required repayments of retirement fund loans	5c.	\$ _____	\$ _____
5d. Insurance	5d.	\$ _____	\$ _____
5e. Union dues	5e.	\$ _____	\$ _____
5f. Other deductions. Specify: _____	5f.	\$ _____	\$ _____
5g. Other deductions. Specify: _____	5g.	\$ _____	\$ _____
5h. Other deductions. Specify: _____	5h.	+\$ _____	+\$ _____

6. Add the payroll deductions. Add lines 5a + 5b + 5c + 5d + 5e +5f + 5g +5h. 6. \$ \_\_\_\_\_

7. Calculate total monthly take-home pay. Subtract line 6 from line 4. 7. \$ \_\_\_\_\_

8. List all other income regularly received:

8a. Net income from rental property and from operating a business, profession, or farm Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a.	\$ _____	\$ _____
8b. Interest and dividends	8b.	\$ _____	\$ _____
8c. Family support payments that you, a non-filing spouse, or a dependent regularly receive Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c.	\$ _____	\$ _____
8d. Unemployment compensation	8d.	\$ _____	\$ _____
8e. Social Security	8e.	\$ _____	\$ _____
8f. Other government assistance. Specify: _____	8f.	\$ _____	\$ _____
8g. Pension or retirement income	8g.	\$ _____	\$ _____
8h. Other monthly income. Specify: _____	8h.	+\$ _____	+\$ _____

9. Add all other income. Add lines 8a + 8b + 8c + 8d + 8e + 8f +8g + 8h. 9. \$ \_\_\_\_\_

10. Calculate monthly income. Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse. 10. \$ \_\_\_\_\_ + \$ \_\_\_\_\_ = \$ \_\_\_\_\_

11. List all contributions to the expenses that you list in Schedule J that anyone else makes.

Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives.

Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in Schedule J.

Specify: \_\_\_\_\_ 11. + \$ \_\_\_\_\_

12. Add the amount in last column of line 10 to the amount in line 11. The result is the combined monthly income. Write that amount on the Summary of Schedules and the Statistical Summary of Certain Liabilities and Related Data, if it applies. 12. \$ \_\_\_\_\_

Combined monthly income

13. Do you expect an increase or decrease within the year after you file this form?

No.

Yes. Explain:

\_\_\_\_\_

## Official Form 6I

# Instructions for Schedule I: Your Income

United States Bankruptcy Court

12/01/13

### How to fill out Schedule I

In *Schedule I: Your Income* (Official Form 6I), you will give the details about your employment and monthly income as of the date you file this form. If you are married and your spouse is living with you, include information about your spouse even if your spouse is not filing with you. If you are separated and your spouse is not filing with you, do not include information about your spouse.

### How to report employment and income

If you have nothing to report for a line, write \$0.

In Part 1, line 1, fill in employment information for you and, if appropriate, for a non-filing spouse. If either person has more than one employer, attach a separate page with information about the additional employment.

In Part 2, give details about the monthly income you currently expect to receive. Show all totals as monthly payments, even if income is not received in monthly payments.

If your income is received in another time period, such as daily, weekly, quarterly, annually, or irregularly, calculate how much income would be by month, as described below.

If either you or a non-filing spouse has more than one employer, calculate the monthly amount for each employer separately, and then combine the income information for all employers for that person on lines 2-7.

One easy way to calculate how much income would be per month is to total the payments earned in a year, then divide by 12 to get a monthly figure. For example, if you are paid annually, you would simply divide your annual salary by 12 to get the monthly amount.

Below are other examples of how to calculate monthly amount.

---

#### Example for quarterly payments:

If you are paid \$15,000 every quarter, figure your monthly income in this way:

$$\begin{array}{r} \$15,000 \text{ income every quarter} \\ \times \quad 4 \text{ pay periods in the year} \\ \hline \$60,000 \text{ total income for the year} \end{array}$$

$$\frac{\$60,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$5,000 \text{ monthly income}$$

---

#### Example for bi-weekly payments:

If you are paid \$2,500 every other week, figure your monthly income in this way:

$$\begin{array}{r} \$2,500 \text{ income every other week} \\ \times \quad 26 \text{ number of pay periods in the year} \\ \hline \$65,000 \text{ total income for the year} \end{array}$$

$$\frac{\$65,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$5,417 \text{ monthly income}$$

---

#### Example for weekly payment:

If you are paid \$1,000 every week, figure your monthly income in this way:

$$\begin{array}{r} \$1,000 \text{ income every week} \\ \times \quad 52 \text{ number of pay periods in the year} \\ \hline \$52,000 \text{ total income for the year} \end{array}$$

$$\frac{\$52,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$4,333 \text{ monthly income}$$

---

**Example for irregular payments:**

If you are paid \$4,000 8 times a year, figure your monthly income in this way:

$$\begin{array}{r} \$4,000 \text{ income a payment} \\ \times \quad 8 \text{ payments a year} \\ \hline \$32,000 \text{ income for the year} \\ \\ \frac{\$32,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$2,667 \text{ monthly income} \end{array}$$

---

**Example for daily payments:**

If you are paid \$75 a day and you work about 8 days a month, figure your monthly income in this way:

$$\begin{array}{r} \$75 \text{ income a day} \\ \times \quad 96 \text{ days a year} \\ \hline \$7,200 \text{ total income for the year} \\ \\ \frac{\$7,200 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$600 \text{ monthly income} \end{array}$$

or this way:

$$\begin{array}{r} \$75 \text{ income a day} \\ \times \quad 8 \text{ payments a month} \\ \hline \$600 \text{ income for the month} \end{array}$$

In Part 2, line 11, fill in amounts that other people provide to pay the expenses you list on *Schedule J: Your Expenses*. For example, if you and a person to whom you are not married deposit the income from both of your jobs into a single bank account and pay all household expenses and you list all your joint household expenses on *Schedule J*, you must list the amounts that person contributes monthly to pay the household expenses on line 11. If you have a roommate and you divide the rent and utilities, do not list the amounts your roommate pays on line 11 if you have listed only your share of those expenses on *Schedule J*. However, if you have listed

the cost of the rent and utilities for your entire house or apartment on *Schedule J*, you must list your roommate's contribution to those expenses on *Schedule I*, line 14. Do not list line 11 contributions that you already disclosed on line 5.

Note that the income you report on *Schedule I* may be different from the income you report on other bankruptcy forms. For example, the *Chapter 7 Statement of Your Current Monthly Income* (Official Form 22A-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 22B), and the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 22C-1) all use a different definition of income and apply that definition to a different period of time. *Schedule I* asks about the income that you are now receiving, while the other forms ask about income you received in the applicable time period before filing. So the amount of income reported in any of those forms may be different from the amount reported here.

**Understand the terms used in this form**

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

**Things to remember when filling out this form**

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(If known)

Check if this is an amended filing

# Official Form 6J

## Schedule J: Your Expenses

12/13

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Describe Your Household**

1. **Do you have dependents who live with you?**

- No  
 Yes. Fill out this information.

Do not list Debtor 1 and Debtor 2.

If you are filing jointly and live in separate households, list dependents who live in either household.

Each dependent who lives in the household	That person's relationship to Debtor 1 or Debtor 2	That person's age
Person 1	_____	_____
Person 2	_____	_____
Person 3	_____	_____
Person 4	_____	_____
Person 5	_____	_____

2. **Do you have dependents who do not live with you?**

- No  
 Yes. Fill out this information:

Do not list anyone listed in line 1.

**Each dependent who does not live in the household**      **That person's relationship to Debtor 1 or Debtor 2**      **That person's age**

Person 1	_____	_____
Person 2	_____	_____

3. **Does anyone else live in your household?**

- No  
 Yes. Fill out this information

Do not list Debtor 1, Debtor 2, and any dependents listed on lines 1 and 2.

If you are filing jointly and live in separate households, list everyone else who lives in either household.

**Each other person who lives in the household**      **That person's relationship to Debtor 1 or Debtor 2**

Person 1	_____
Person 2	_____
Person 3	_____

**Part 2: Estimate Your Ongoing Monthly Expenses**

		Column A For all individuals	Column B For Chapter 13 ONLY
		Your expenses as of the date you file for bankruptcy	What your expenses will be if your current plan is confirmed
<b>4. The rental or home ownership expenses for your residence.</b> Include first mortgage payments and any rent for the ground or lot.	4.	\$ _____	\$ _____
<b>If not included in line 4:</b>			
4a. Real estate taxes	4a.	\$ _____	\$ _____
4b. Property, homeowner's, or renter's insurance	4b.	\$ _____	\$ _____
4c. Home maintenance, repair, and upkeep expenses	4c.	\$ _____	\$ _____
4d. Homeowner's association or condominium dues	4d.	\$ _____	\$ _____
<b>5. Additional mortgage payments for your residence,</b> such as home equity loans	5.	\$ _____	\$ _____
<b>6. Utilities:</b>			
6a. Electricity, heat, natural gas	6a.	\$ _____	\$ _____
6b. Water, sewer, garbage collection	6b.	\$ _____	\$ _____
6c. Telephone, cell phone, Internet, satellite, and cable services	6c.	\$ _____	\$ _____
6d. Other. Specify: _____	6d.	\$ _____	\$ _____
<b>7. Food and housekeeping supplies</b>	7.	\$ _____	\$ _____
<b>8. Childcare and children's education costs</b>	8.	\$ _____	\$ _____
<b>9. Clothing, laundry, and dry cleaning</b>	9.	\$ _____	\$ _____
<b>10. Personal care products and services</b>	10.	\$ _____	\$ _____
<b>11. Medical and dental expenses</b>	11.	\$ _____	\$ _____
<b>12. Transportation.</b> Include gas, maintenance, bus or train fare. Do not include car payments.	12.	\$ _____	\$ _____
<b>13. Entertainment, clubs, recreation, newspapers, magazine, and books</b>	13.	\$ _____	\$ _____
<b>14. Charitable contributions and religious donations</b>	14.	\$ _____	\$ _____
<b>15. Insurance.</b> Do not include insurance deducted from your pay or included in lines 4 or 20.			
15a. Life insurance	15a.	\$ _____	\$ _____
15b. Health insurance	15b.	\$ _____	\$ _____
15c. Vehicle insurance	15c.	\$ _____	\$ _____
15d. Other insurance. Specify: _____	15d.	\$ _____	\$ _____
<b>16. Taxes.</b> Do not include taxes deducted from your pay or included in lines 4 or 20. Specify: _____	16.	\$ _____	\$ _____
<b>17. Installment or lease payments:</b>			
17a. Car payments for Vehicle 1	17a.	\$ _____	\$ _____
17b. Car payments for Vehicle 2	17b.	\$ _____	\$ _____
17c. Student loan payments	17c.	\$ _____	\$ _____
17d. Other. Specify: _____	17d.	\$ _____	\$ _____
17e. Other. Specify: _____	17e.	\$ _____	\$ _____

		Column A For all individuals	Column B For Chapter 13 ONLY
		Your expenses as of the date you file for bankruptcy	What your expenses will be if your current plan is confirmed
18.	<b>Alimony, maintenance, and support that you pay to others</b>	18. \$ _____	\$ _____
19.	<b>Other payments you make to support others who do not live with you.</b> Specify: _____	19. \$ _____	\$ _____
20.	<b>Other real property expenses not included in lines 4 or 5 of this form or on Schedule I: Your Income (Official Form 6I)</b>		
	20a. Mortgages on other property	20a. \$ _____	\$ _____
	20b. Real estate taxes	20b. \$ _____	\$ _____
	20c. Property, homeowner's, or renter's insurance	20c. \$ _____	\$ _____
	20d. Maintenance, repair, and upkeep expenses	20d. \$ _____	\$ _____
	20e. Homeowner's association or condominium dues	20e. \$ _____	\$ _____
21.	<b>Other.</b> Specify: _____	21. + \$ _____	+ \$ _____
22.	<b>Your monthly expenses.</b> Add lines 4 through 21. The result is your monthly expenses.	22. \$ _____	\$ _____
23.	<b>Calculate your monthly net income.</b>		
	23a. Copy line 12 (your combined monthly income) from Schedule I.	23a. \$ _____	\$ _____
	23b. Copy your monthly expenses from line 22 above.	23b. - \$ _____	- \$ _____
	23c. Subtract your monthly expenses from your monthly income. The result is your <i>monthly net income</i> .	23c. \$ _____	\$ _____
24.	<b>Do you expect an increase or decrease in your expenses within the year after you file this form?</b>  For example, do you expect to finish paying for your car loan within the year or do you expect your mortgage payment to increase or decrease because of a modification to the terms of your mortgage?  <input type="checkbox"/> No. <input type="checkbox"/> Yes.  Explain here:          		

## Official Form 6J

# Instructions for Schedule J: Your Expenses

United States Bankruptcy Court

12/01/13

### How to Fill Out Schedule J

Use Column A of *Schedule J: Your Expenses* (Official Form 6J) to estimate the monthly expenses, as of the date you file for bankruptcy, for you, your dependents, and the other people in your household whose income is included on *Schedule I: Your Income* (Official Form 6I).

If you are filing under chapter 13, you must also complete Column B. In Column B, itemize what your monthly expenses would be under the plan that you are submitting with this schedule or, if no plan is being submitted now, under the most recent plan you previously submitted.

Include your non-filing spouse's expenses unless you are separated. If one of you keeps a separate household, fill out separate *Schedule J* for Debtor 1 and Debtor 2 and write *Debtor 1* or *Debtor 2* at the top of page 1 of the form.

Do not include expenses that other members of your household pay directly from their income if you did not include that income on *Schedule I*. For example, if you have a roommate and you divide the rent and utilities and you have not listed your roommate's contribution to household expenses in line 11 of *Schedule I*, you would list only your share of these expenses on *Schedule J*.

Show all totals as monthly payments. If you have weekly, quarterly, or annual payments, calculate how much you would spend on those items every month.

Do not list as expenses any payments on credit card debts incurred before filing bankruptcy.

Do not include business expenses on this form. You have already accounted for those expenses as part of determining net business income on *Schedule I*.

On line 20, do not include expenses for your residence or for any rental or business property. You have already

listed expenses for your residence on lines 4 and 5 of this form. You listed the expenses for your rental and business property as part of the process of determining your net income from that property on *Schedule I* (line 8a).

If you have nothing to report for a line, write \$0.

### Understand the terms used in this form

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

### Things to remember when filling out this form

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.
- Do not list a minor child's full name. Instead, fill in only the child's initials and the full name and address of the child's parent or guardian. For example, write A.B., a minor child (*John Doe, parent, 123 Main St., City, State*). 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m) and 9037.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**



## COMMITTEE NOTE

*Schedule I: Your Income* (Official Form 6I) and *Schedule J: Your Expenses* (Official Form 6J), which apply only in cases of individual debtors, have been revised as part of the Forms Modernization Project, making the forms easier to read and, as a result, likely to generate more complete and accurate responses.

Revised Schedules I and J seek to obtain a full picture of debtor's economic situation—to the extent that debtor receives income or has expenses. The revised forms are intended to avoid the situation that frequently happens with the current forms where debtor lives with and pools assets with other people and the household provides support to dependents who may not be related by blood or marriage to debtor.

The amendments seek to avoid the situation where the expenses listed on Schedule J are for the entire household, but the income listed on Schedule I is only for the debtor. Line 11 on revised Schedule I, now includes contributions made by someone else to the expenses on Schedule J and the debtor is instructed to include contributions from an unmarried partner, members of the debtor's household, dependents, roommates, and other friends or relatives.

As revised, Schedule J asks for expenses at two different points in time in chapter 13 cases—as of the date the debtor files bankruptcy (Column A) and as of the date a proposed 13 plan is confirmed (Column B).

In drafting the form it became apparent that at least some courts are using Schedules I and J in analyzing proposed chapter 13 plans and potential modification of those plans. Sometimes amended Schedules I and J are required when a debtor's financial circumstances change. To avoid a lack of clarity on the form regarding the date to be used in computing expenses, and in order to allow Schedule J to continue to serve the plan feasibility function, the revised form requests information on both time bases in chapter 13 cases.

New lines 1, 2, and 3 on revised Schedule J request information on dependents who live with the debtor, dependents who live separately, and other members of the household. In addition, new line 23 on the form includes a calculation of the debtor's monthly net income.

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(if known)

**Check one only as directed in lines 1, 2, 3, or 17:**

According to the calculations required by this Statement:

- 1. There is no presumption of abuse.
- 2. The presumption of abuse is determined by Form 22A-2.
- 3. The Means Test does not apply now because of qualified military service but it could apply later.

Check if this is an amended filing

**Official Form 22A-1**

**Chapter 7 Statement of Your Current Monthly Income**

12/13

**Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).**

**Part 1: Identify the Kind of Debts You Have**

1. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." Make sure that your answer is consistent with the "Nature of Debts" box on page one of the *Voluntary Petition* (Official Form 1).
- No. On the top of this page, check box 1, *There is no presumption of abuse*.....Go to Part 5.
  - Yes.....Go to Part 2.

**Part 2: Determine Whether Military Service Provisions Apply to You**

**If you are filing this case jointly and any of the exclusions in Part 2 applies to only one of you, the other person should complete a separate Chapter 7 Statement of Your Current Monthly Income (Official Form 22A-1) if you believe that this is required by 11 U.S.C. § 707(b)(2)(C).**

2. **Are you a disabled veteran** (as defined in 38 U.S.C. § 3741(1))?
- No. Go to line 3.
  - Yes. Did you incur debts mostly while you were on active duty or while you were performing a homeland defense activity?  
11 U.S.C. § 101(d)(1); 32 U.S.C. § 901(1)
    - No. Go to line 3.
    - Yes. On the top of this page, check box 1, *There is no presumption of abuse*.....Go to Part 5.

3. **Are you or have you been a Reservist or member of the National Guard?**

- No. Go to Part 3.
- Yes. Were you called to active duty or did you perform a homeland defense activity? 10 U.S.C. § 101(d)(1); 32 U.S.C. § 901(1)
  - No. Go to Part 3.
  - Yes. Check any one of the following categories that applies:
    - I was called to active duty after September 11, 2001, for at least 90 days and remain on active duty.
    - I was called to active duty after September 11, 2001, for at least 90 days and was released from active duty on \_\_\_\_\_, which is fewer than 540 days before I file this bankruptcy case.
    - I am performing a homeland defense activity for at least 90 days.
    - I performed a homeland defense activity for at least 90 days, ending on \_\_\_\_\_, which is fewer than 540 days before I file this bankruptcy case.

If you did not check any of these categories, go to Part 3.

If you checked one of the categories, go to the top of this page. Check box 3, *The Means Test does not apply now because of qualified military service but it could apply later*; then go to Part 5. You are not required to fill out the rest of this form during the exclusion period. The *exclusion period* means the time you are on active duty or are performing a homeland defense activity, and for 540 days afterward. 11 U.S.C. § 707(b)(2)(D)(ii). If your exclusion period ends before your case is closed, you may have to file an amended form later.

**Part 3: Calculate Your Current Monthly Income**

4. **What is your marital and filing status?** Check one only.

- Not married.** Fill out Column A, lines 5-14.
- Married and your spouse is filing with you.** Fill out both Columns A and B, lines 5-14.  
**Married and your spouse is NOT filing with you. You and your spouse are:**
  - Living in the same household and are not legally separated.** Fill out both Columns A and B, lines 5-14.
  - Living separately or are legally separated.** Fill out Column A, lines 5-14; do not fill out Column B. By checking this box, you declare under penalty of perjury that you and your spouse are legally separated under nonbankruptcy law that applies or that you and your spouse are living apart for reasons that do not include evading the Means Test requirements. 11 U.S.C. § 707(b)(7)(B).

**Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case.** 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

	Column A For you	Column B Debtor 2 or non-filing spouse
5. <b>Your gross wages, salary, tips, bonuses, overtime, and commissions</b> (before all payroll deductions).	\$ _____	\$ _____
6. <b>Alimony and maintenance payments</b>	\$ _____	\$ _____
7. <b>All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.</b> Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Also, include regular contributions from a spouse if Column B is not filled in. Do not include payments you listed on line 6.	\$ _____	\$ _____
8. <b>Net income from operating a business, profession, or farm</b>		
Gross receipts (before all deductions)	\$ _____	
Ordinary and necessary operating expenses	- \$ _____	
Net monthly income from a business, profession, or farm	\$ _____ <b>Copy here →</b>	\$ _____
9. <b>Net income from rental and other real property</b>		
Gross receipts (before all deductions)	\$ _____	
Ordinary and necessary operating expenses	- \$ _____	
Net monthly income from rental or other real property	\$ _____ <b>Copy here →</b>	\$ _____
10. <b>Interest, dividends, and royalties</b>	\$ _____	\$ _____
11. <b>Unemployment compensation</b>	\$ _____	\$ _____
Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ..... ↓		
For you .....	\$ _____	
For your spouse .....	\$ _____	
12. <b>Pension or retirement income.</b> Do not include any amount received that was a benefit under the Social Security Act.	\$ _____	\$ _____
13. <b>Income from all other sources not listed above.</b> Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism. If necessary, list other sources on a separate page and put the total on line 13c.		
13a. _____	\$ _____	\$ _____
13b. _____	\$ _____	\$ _____
13c. Total amounts from separate pages, if any.	+ \$ _____	+ \$ _____
14. <b>Calculate your total current monthly income.</b> Add lines 5 through 13 for each column. Then add the total for Column A to the total for Column B.	\$ _____	\$ _____
	+	= \$ _____
		Total current monthly income

Part 4: Determine Whether the Means Test Applies to You

15. Calculate your annual income using your total current monthly income from Part 3. Follow these steps:

15a. Copy your total current monthly income from line 14..... Copy line 14 here → 15a.

\$

Multiply by 12 (the number of months in a year).

x 12

15b. The result is your annual income for this part of the form.

15b.

\$

16. Calculate the median family income that applies to you. Follow these steps:

Fill in the state in which you live.

Fill in the number of people in your household.

Fill in the median family income for your state and size of household. .... 16.

\$

To find that information, either go to the Means Test information at http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm or ask for help at the clerk's office of the bankruptcy court.

17. How do the lines compare?

17a. Line 15b is less than or equal to line 16. On the top of page 1, check box 1, There is no presumption of abuse. Go to Part 5.

17b. Line 15b is more than line 16. On the top of page 1, check box 2, The presumption of abuse is determined by Form 22A-2. Go to Part 5 and fill out Form 22A-2.

Part 5: Sign Here

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

x

Signature of Debtor 1

x

Signature of Debtor 2

Date MM / DD / YYYY

Date MM / DD / YYYY

If you checked 17a, do NOT fill out or file Official Form 22A-2, Chapter 7 Means Test Calculation.

If you checked line 17b, fill out Official Form 22A-2, Chapter 7 Means Test Calculation and file it with this form.

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(if known)

**Check one only as directed in lines 40 or 42:**

According to the calculations required by this Statement:

- 1. There is no presumption of abuse.
- 2. There is a presumption of abuse.
- Check if this is an amended filing

# Official Form 22A-2

## Chapter 7 Means Test Calculation

12/13

To fill out this form, you will need your completed copy of Form 22A-1: *Chapter 7 Statement of Your Current Monthly Income (Official Form 22A-1)*.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

**Part 1: Determine Your Adjusted Income**

1. **Copy your total current monthly income.** ..... Copy line 14 from Official Form 22A-1 here → 1. \$ \_\_\_\_\_

2. **Did you fill out Column B in Part 3 of Official Form 22A-1?**

- No. Fill in \$0 on line 3d.
- Yes. Is your spouse filing with you?
  - No. Go to line 3.
  - Yes. Fill in \$0 on line 3d.

3. **Adjust your current monthly income by subtracting any part of your spouse's income not used to pay for the household expenses of you or your dependents.** Follow these steps:

On line 14, Column B of Form 22A-1, was any amount of the income you reported for your spouse NOT regularly used for the household expenses of you or your dependents?

- No. Fill in 0 on line 3d.
- Yes. Fill in the information below:

State each purpose for which the income was used <small>For example, the income is used to pay your spouse's tax debt or to support people other than you or your dependents</small>	Fill in the amount you are subtracting from your spouse's income
3a. _____	\$ _____
3b. _____	\$ _____
3c. _____	+ \$ _____
3d. <b>Total.</b> Add lines 3a, 3b, and 3c. ....	\$ _____

Copy total here → 3d. - \$ \_\_\_\_\_

4. **Adjust your current monthly income.** Subtract line 3d from line 1. \$ \_\_\_\_\_

Part 2: Calculate Your Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 5-14. To find the IRS standards, either go to http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm or ask for help at the clerk's office of the bankruptcy court.

Deduct the expense amounts set out in lines 6-15 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not deduct any amounts that you subtracted from your spouse's income in line 3 and do not deduct any operating expenses that you subtracted from income in lines 8 and 9 of Form 22A-1.

If your expenses differ from month to month, enter the average expense.

Whenever this part of the form refers to you, it means both you and your spouse if Column B of Form 22A-1 is filled in.

5. The number of people used in determining your deductions from income

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

[Empty box for line 5]

National Standards You must use the IRS National Standards to answer the questions in lines 6-7.

6. Food, clothing, and other items: Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items.

\$ [Empty box for line 6]

7. Out-of-pocket health care allowance: Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories — people who are under 65 and people who are 65 or older — because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

People who are under 65 years of age

7a. Out-of-pocket health care allowance per person

\$ [Empty box for line 7a]

7b. Number of people who are under 65

X [Empty box for line 7b]

7c. Subtotal. Multiply line 7a by line 7b.

\$ [Empty box for line 7c]

Copy line 7c here →

\$ [Empty box for line 7c subtotal]

People who are 65 years of age or older

7d. Out-of-pocket health care allowance per person

\$ [Empty box for line 7d]

7e. Number of people who are 65 or older

X [Empty box for line 7e]

7f. Subtotal. Multiply line 7d by line 7e.

\$ [Empty box for line 7f]

Copy line 7f here →

+ \$ [Empty box for line 7f subtotal]

7g. Total. Add lines 7c and 7f.

\$ [Empty box for line 7g]

Copy total here →

\$ [Empty box for line 7g total]

**Local Standards** You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- Housing and utilities – Insurance and operating expenses
- Housing and utilities – Mortgage or rent expenses

Use the U.S. Trustee Program chart to answer the questions in lines 8-9. Go to <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm> or ask for help at the clerk's office of the bankruptcy court.

8. **Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county for insurance and operating expenses.

\$ \_\_\_\_\_

9. **Housing and utilities – Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county for mortgage or rent expenses.

9a. \$ \_\_\_\_\_

9b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of the creditor	Does payment include taxes or insurance?	Average monthly payment
	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
	<input type="checkbox"/> No <input type="checkbox"/> Yes	+ \$ _____

9b. Total average monthly payment

\$ \_\_\_\_\_

Copy line 9b here →

– \$ \_\_\_\_\_

Repeat this amount on line 33a.

9c. Net mortgage or rent expense.

Subtract line 9b (total average monthly payment) from line 9a (mortgage or rent expense). If this amount is less than \$0, enter \$0.

9c. \$ \_\_\_\_\_

Copy line 9c here →

\$ \_\_\_\_\_

10. If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing does not accurately compute the amount that applies to you, fill in any additional amount you claim.

\$ \_\_\_\_\_

Explain why:

\_\_\_\_\_

11. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.

- 0. Go to line 14.
- 1. Go to line 12.
- 2 or more. Go to line 12.

12. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the *Operating Costs* that apply for your Census region or metropolitan statistical area.

\$ \_\_\_\_\_

13. **Vehicle ownership or lease expense:** Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

Vehicle 1 Describe Vehicle 1:

13a. Ownership or leasing costs using IRS Local Standard 13a. \$

13b. Average monthly payment for all debts secured by Vehicle 1. Do not include installment payments for leased vehicles.

To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Table with 2 columns: Name of each creditor for Vehicle 1, Average monthly payment

Copy 13b here - \$

Repeat this amount on line 33b.

13c. Net Vehicle 1 ownership or lease expense Subtract line 13b from line 13a. If this amount is less than \$0, enter \$0. 13c.

\$

Copy net Vehicle 1 expense here ->

\$

Vehicle 2 Describe Vehicle 2:

13d. Ownership or leasing costs using IRS Local Standard 13d. \$

13e. Average monthly payment for all debts secured by Vehicle 2. Do not include costs for leased vehicles.

Table with 2 columns: Name of each creditor for Vehicle 2, Average monthly payment

Copy here - \$

Repeat this amount on line 33c.

13f. Net Vehicle 2 ownership or lease expense Subtract line 13e from 13d. If this amount is less than \$0, enter \$0. 13f.

\$

Copy net Vehicle 2 expense here ->

\$

14. **Public transportation expense:** If you claimed 0 vehicles in line 11, using the IRS Local Standards, fill in the Public Transportation expense allowance regardless of whether you use public transportation. \$

15. **Additional public transportation expense:** If you claimed 1 or more vehicles in line 11 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for Public Transportation. \$



**Other Necessary Expenses**

In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

16. **Taxes:** The total monthly amount that you will actually owe for federal, state and local taxes, such as income taxes, self-employment taxes, social security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. However, if you expect to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes.

\$ \_\_\_\_\_

Do not include real estate, sales, or use taxes.

17. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs.

\$ \_\_\_\_\_

Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings.

18. **Life insurance:** The total monthly premiums that you pay for your term life insurance.

\$ \_\_\_\_\_

Do not include premiums for insurance on your dependents, for whole life, or for any other form of life insurance.

19. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments.

\$ \_\_\_\_\_

Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 35.

20. **Education:** The total monthly amount that you pay for education that is either required:

- as a condition for your job, or
- for your physically or mentally challenged dependent child if no public education is available for similar services.

\$ \_\_\_\_\_

21. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool.

\$ \_\_\_\_\_

Do not include payments for any elementary or secondary school education.

22. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 7.

\$ \_\_\_\_\_

Payments for health insurance or health savings accounts should be listed only in line 25.

23. **Telecommunication services:** The total monthly amount that you pay for telecommunication services, such as pagers, call waiting, caller identification, special long distance, business internet service, and business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer.

+ \$ \_\_\_\_\_

Do not include payments for basic home telephone, internet and cell phone service. Do not include self-employment expenses, such as those reported on line 8 of *Official Form 22A-1*, or any amount you previously deducted.

24. **Add all of the expenses allowed under the IRS expense allowances.**

\$ \_\_\_\_\_

Add lines 16 through 23.

**Additional Expense Deductions**

These are additional deductions allowed by the Means Test.  
Note: Do not include any expense allowances listed in lines 6-24.

25. **Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.

Health insurance	\$ _____
Disability insurance	\$ _____
Health savings account	+ \$ _____
Total	\$ _____

Copy total here → ..... \$ \_\_\_\_\_

Do you actually spend this total amount?

No. How much do you actually spend? \$ \_\_\_\_\_

Yes

26. **Continued contributions to the care of household or family members.** The 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.

\$ \_\_\_\_\_

27. **Protection against family violence.** The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply.

\$ \_\_\_\_\_

By law, the court must keep the nature of these expenses confidential.

28. **Additional home energy costs.** Your home energy costs are included in your non-mortgage housing and utilities allowance on line 8.

If you believe that you have home energy costs that are more than the home energy costs included in the non-mortgage housing and utilities allowance, then fill in the excess amount of home energy costs.

You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary.

\$ \_\_\_\_\_

29. **Education expenses for dependent children who are younger than 18.** The monthly expenses (not more than \$147\* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school.

\$ \_\_\_\_\_

You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 6-23.

\* Subject to adjustment on 4/01/13, and every 3 years after that for cases begun on or after the date of adjustment.

30. **Additional food and clothing expense.** The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards.

\$ \_\_\_\_\_

To find the maximum additional allowance, either go to <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm> or ask for help at the clerk's office of the bankruptcy court.

You must show that the additional amount claimed is reasonable and necessary.

31. **Continuing charitable contributions.** The amount that you will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 11 U.S.C. § 548(d)(3) and (4).

\$ \_\_\_\_\_

32. **Add all of the additional expense deductions.**

Add lines 25 through 31.

\$ \_\_\_\_\_

**Deductions for Debt Payment**

33. For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33g.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

**Average monthly payment**

**Mortgages on your home**

33a. Copy line 9b here ..... \$ \_\_\_\_\_

**Loans on your first two vehicles**

33b. Copy line 13b here. .... \$ \_\_\_\_\_

33c. Copy line 13e here. .... \$ \_\_\_\_\_

Name of each creditor for other secured debt	Identify property that secures the debt	Does payment include taxes or insurance?	
--	---	--	--

33d.		<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
33e.		<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
33f.		<input type="checkbox"/> No <input type="checkbox"/> Yes	+ \$ _____

33g. Total average monthly payment. Add lines 33a through 33f..... \$ \_\_\_\_\_ **Copy total here** → \$ \_\_\_\_\_

34. Are any debts that you listed in line 33 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?

- No. Go to line 35.
- Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 34, to keep possession of your property (called the *cure amount*). Next, divide by 60 and fill in the information below.

Name of the creditor	Identify property that secures the debt	Total cure amount	Monthly cure amount
		\$ _____ ÷ 60 =	\$ _____
		\$ _____ ÷ 60 =	\$ _____
		\$ _____ ÷ 60 =	+ \$ _____
Total			\$ _____

**Copy total here** → \$ \_\_\_\_\_

35. Do you owe any priority claims — such as a priority tax, child support, or alimony — that are past due as of the filing date of your bankruptcy case? 11 U.S.C. § 507

- No. Go to line 36.
Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 19.

Total amount of all past-due priority claims.

Form with input fields for total amount of all past-due priority claims, divided by 60, resulting in a dollar amount.

36. Are you eligible to file a case under Chapter 13? 11 U.S.C. § 109(e). For more information, go to www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter13.aspx

- No. Go to line 37.
Yes. Fill in the following information.

Projected monthly plan payment if you were filing under Chapter 13

Form with input field for projected monthly plan payment.

Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. To find this information, go to http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm or ask for help at the clerk's office of the bankruptcy court.

Form with input field for current multiplier, preceded by an 'X'.

Average monthly administrative expense if you were filing under Chapter 13

Form with input field for average monthly administrative expense.

Copy total here ->

Form with input field for total of lines 36a, 36b, and 36c.

37. Add all of the deductions for debt payment. Add lines 33g through 36.

Form with input field for total of lines 33g through 36.

Total Deductions from Income

38. Add all of the allowed deductions.

Copy line 24, All of the expenses allowed under IRS expense allowances.....

Form with input field for line 24.

Copy line 32, All of the additional expense deductions.....

Form with input field for line 32.

Copy line 37, All of the deductions for debt payment.....

Form with input field for line 37, preceded by a '+' sign.

Total deductions

Form with input field for total of lines 38a, 38b, and 38c.

Copy total here ->

Form with input field for total of lines 38a, 38b, and 38c.

Part 3: Determine Whether There Is a Presumption of Abuse

39. Calculate monthly disposable income for 60 months

39a. Copy line 4, adjusted current monthly income.....

Form with input field for line 4.

39b. Copy line 38, Total deductions.....

Form with input field for line 38, preceded by a '-' sign.

39c. Monthly disposable income 11 U.S.C. § 707(b)(2) Subtract line 39b from line 39a.

Form with input field for line 39c.

Copy line 39c here ->

Form with input field for line 39c.

For the next 60 months (5 years)

x 60

39d. Total. Multiply line 39c by 60..... 39d.

Form with input field for line 39d.

Copy line 39d here ->

Form with input field for line 39d.

40. Find out whether there is a presumption of abuse. Check the box that applies:

- The line 39d is less than \$7,025\*. On the top of page 1 of this form, check box 1, There is no presumption of abuse. Go to Part 5.
- The line 39d is more than \$11,725\*. On the top of page 1 of this form, check box 2, There is a presumption of abuse. You may fill out Part 4 if you claim special circumstances. Then go to Part 5.
- The line 39d is at least \$7,025\*, but not more than \$11,725\*. Go to line 42.

\* Subject to adjustment on 4/01/13, and every 3 years after that for cases filed on or after the date of adjustment.

41. 41a. Fill in the amount of your total nonpriority unsecured debt. If you filled out the Statistical Summary of Certain Liabilities and Related Data (Official Form 6), you may refer to line 5 at the bottom of that form.

\$ \_\_\_\_\_

41b. 25% of your total nonpriority unsecured debt. 11 U.S.C. § 707(b)(2)(A)(i)(I) Multiply line 41a by 0.25.

x .25  
\$ \_\_\_\_\_

Copy here →

\$ \_\_\_\_\_

42. Determine whether the income you have left over after subtracting all allowed deductions is enough to pay 25% of your unsecured, nonpriority debt.

Check the box that applies:

- Line 39d is less than line 41b. On the top of page 1 of this form, check box 1, There is no presumption of abuse. Go to Part 5.
- Line 39d is equal to or more than line 41b. On the top of page 1 of this form, check box 2, There is a presumption of abuse. You may fill out Part 4 if you claim special circumstances. Then go to Part 5.

43. Do you have any special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative? 11 U.S.C. § 707(b)(2)(B)

- No. Go to Part 5.
- Yes. Fill in the following information. All figures should reflect your average monthly expense or income adjustment for each item. You may include expenses you listed in line 25.

You must give a detailed explanation of the special circumstances that make the expenses or income adjustments necessary and reasonable. You must also give your case trustee documentation of your actual expenses or income adjustments.

Give a detailed explanation of the special circumstances

Average monthly expense or income adjustment

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

X \_\_\_\_\_  
Signature of Debtor 1

X \_\_\_\_\_  
Signature of Debtor 2

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

## Official Forms 22A-1 and 22A-2

# Instructions for the Chapter 7 Statement of Your Current Monthly Income and Means Test Calculation

United States Bankruptcy Court

12/01/13

### How to fill out these forms

Official Forms 22A-1 and 22A-2 determine whether your income and expenses create a presumption of abuse that may prevent you from obtaining relief from your debts under chapter 7 of the Bankruptcy Code. Chapter 7 relief can be denied to a person who has primarily consumer debts if the court finds that the person has enough income to repay creditors a portion of their claims set out in the Bankruptcy Code.

You must file 22A-1, the *Chapter 7 Statement of Your Current Monthly Income* (Official Form 22A-1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income for households of the same size in your state. If your income is not above the median, there is no presumption of abuse and you will not have to fill out the second form.

If your income is above the median, you must file the second form, 22A-2, *Chapter 7 Means Test Calculation* (Official Form 22A-2). The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay other debts. If this amount is high enough, it will give rise to a *presumption of abuse*. A presumption of abuse does not mean you are actually trying to abuse the bankruptcy system. Rather, the presumption simply means that you may have enough income that you should not be granted relief under chapter 7. You may overcome the presumption by showing special circumstances that reduce your income or increase your expenses.

If you cannot obtain relief under chapter 7, you may be eligible to continue under another chapter of the Bankruptcy Code and pay creditors over a period of time.

Read each question carefully. You may not be required to answer every question on this form. For example, your military status may determine whether you must fill out the entire form. The instructions will alert you if you may skip questions.

If you have nothing to report for a line, write \$0.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

If you and your spouse are filing together, you and your spouse may file a single statement. However, if an exclusion in Parts 1 or 2 applies to either of you, separate statements may be required. 11 U.S.C. § 707(b)(2)(C).

### Understand the terms used in the form

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

### Things to remember when filling out these forms

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(If known)

Check if this is an amended filing

**Official Form 22B**

**Chapter 11 Statement of Your Current Monthly Income**

12/13

**You must file this form if you are an individual and are filing for bankruptcy under Chapter 11. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).**

**Part 1: Calculate Your Current Monthly Income**

1. **What is your marital and filing status?** Check one only.
- Not married.** Fill out Column A, lines 2-11.
  - Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.
  - Married and your spouse is NOT filing with you.** Fill out Column A, lines 2-11.

**Fill in the average monthly income that you received from all sources during the 6 full months before you filed for bankruptcy.**

11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

	<i>Column A For Debtor 1</i>	<i>Column B Debtor 2 or non-filing spouse</i>
2. <b>Your gross wages, salary, tips, bonuses, overtime, and commissions</b> (before all payroll deductions).	\$ _____	\$ _____
3. <b>Alimony and maintenance payments</b>	\$ _____	\$ _____
4. <b>All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.</b> Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Also, include regular contributions from a spouse if Column B is not filled in. Do not include payments you listed on line 3.	\$ _____	\$ _____
5. <b>Net income from operating a business, profession, or farm</b>		
Gross receipts (before all deductions)	\$ _____	
Ordinary and necessary operating expenses	– \$ _____	
Net monthly income from a business, profession, or farm	\$ _____ <b>Copy here →</b>	\$ _____
6. <b>Net income from rental and other real property</b>		
Gross receipts (before all deductions)	\$ _____	
Ordinary and necessary operating expenses	– \$ _____	
Net monthly income from rental or other real property	\$ _____ <b>Copy here →</b>	\$ _____

	Column A For Debtor 1	Column B Debtor 2 or non-filing spouse
<b>7. Interest, dividends, and royalties</b>	\$ _____	\$ _____
<b>8. Unemployment compensation.</b> Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ..... ↓	\$ _____	\$ _____
For you .....	\$ _____	
For your spouse .....	\$ _____	
<b>9. Pension or retirement income.</b> Do not include any amount received that was a benefit under the Social Security Act.	\$ _____	\$ _____
<b>10. Income from all other sources not listed above.</b> Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism. If necessary, list other sources on a separate page and put the total on line 10c.		
10a. _____	\$ _____	\$ _____
10b. _____	\$ _____	\$ _____
10c. Total amounts from separate pages, if any.	+ \$ _____	+ \$ _____
<b>11. Calculate your total current monthly income.</b> Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	\$ _____	+ \$ _____ = \$ _____
		<b>Total current monthly income</b>

**Part 2: Sign Here**

By signing here, under penalty of perjury I declare that the information on this statement or in any attachments is true and correct.

**X** \_\_\_\_\_  
 Signature of Debtor 1

**X** \_\_\_\_\_  
 Signature of Debtor 2

Date \_\_\_\_\_  
 MM / DD / YYYY

Date \_\_\_\_\_  
 MM / DD / YYYY



## Official Form 22B

# Instructions for the Chapter 11 Statement of Your Current Monthly Income

United States Bankruptcy Court

12/01/13

### How to Fill Out this Form

You must file the *Chapter 11 Statement of Your Current Monthly Income* (Official Form 22B) if you are an individual filing for bankruptcy under Chapter 11.

If you have nothing to report for a line, write \$0.

### Understand the terms used in the form

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

### Things to remember when filling out this form

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
 (Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
 (If known)

**Check as directed in lines 17 and 21:**

According to the calculations required by this Statement:

- 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
- 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- 3. The commitment period is 3 years.
- 4. The commitment period is 5 years.

Check if this is an amended filing

**Official Form 22C-1**

**Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period**

**12/13**

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

**Part 1: Calculate Your Average Monthly Income**

1. **What is your marital and filing status?** Check one only.

- Not married.** Fill out Column A, lines 2-11.
- Married.** Fill out both Columns A and B, lines 2-11.

**Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case.** 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

- 2. **Your gross wages, salary, tips, bonuses, overtime, and commissions** (before all payroll deductions).
- 3. **Alimony and maintenance payments**
- 4. **All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Also, include regular contributions from a spouse if Column B is not filled in. Do not include payments you listed on line 3.
- 5. **Net income from operating a business, profession, or farm**

	<i>Column A For Debtor 1</i>	<i>Column B Debtor 2 or non-filing spouse</i>
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____

Gross receipts (before all deductions) \$ \_\_\_\_\_

Ordinary and necessary operating expenses - \$ \_\_\_\_\_

Net monthly income from a business, profession, or farm \$ \_\_\_\_\_

Copy here →

Column A For Debtor 1

Column B Debtor 2 or non-filing spouse

6. Net income from rental and other real property

Gross receipts (before all deductions) \$
Ordinary and necessary operating expenses - \$
Net monthly income from rental or other real property \$

Copy here ->

\$ \$

7. Interest, dividends, and royalties

\$

8. Unemployment compensation

Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here:

For you \$
For your spouse \$

\$

9. Pension or retirement income. Do not include any amount received that was a benefit under the Social Security Act.

\$

10. Income from all other sources not listed above. Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism. If necessary, list other sources on a separate page and put the total on line 10c.

10a.
10b.
10c. Total amounts from separate pages, if any.

\$
\$
+\$

11. Calculate your total average monthly income. Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.

\$ + \$ = \$

Total average monthly income

Part 2. Determine How to Measure Your Deductions from Income

12. Copy your total average monthly income from line 11. \$

13. Calculate the marital adjustment. Check one:

- You are not married. Fill in 0 in line 13d.
You are married and your spouse is filing with you. Fill in 0 in line 13d.
You are married and your spouse is not filing with you.

Fill in the amount of the income listed in line 11, Column B, that was NOT regularly paid for the household expenses of you or your dependents, such as payment of the spouse's tax liability or the spouse's support of someone other than you or your dependents.

In lines 13a-c, specify the basis for excluding this income and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page.

If this adjustment does not apply, enter 0 on line 13d.

13a. \$
13b. \$
13c. + \$

Total \$ Copy here. -> 13d. - \$

14. Your current monthly income. Subtract line 13d from line 12. 14. \$ \_\_\_\_\_

15. Calculate your current monthly income for the year. Follow these steps:

15a. Copy line 14 here → ..... 15a. \$ \_\_\_\_\_

Multiply line 15a by 12 (the number of months in a year). x 12

15b. The result is your current monthly income for the year for this part of the form. 15b. \$ \_\_\_\_\_

16. Calculate the median family income that applies to you. Follow these steps:

16a. Fill in the state in which you live. [ ]

16b. Fill in the number of people in your household. [ ]

16c. Fill in the median family income for your state and size of household..... 16c. \$ \_\_\_\_\_

To find that information, either go to the Means Test information at http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm or ask for help at the clerk's office of the bankruptcy court .

17. How do the lines compare?

17a. [ ] Line 15b is less than or equal to line 16c. On the top of page 1 of this form, check box 1, Disposable income is not determined under 11 U.S.C. § 1325(b)(3). Go to Part 3. Do NOT fill out Official Form 22C-2: Calculation of Disposable Income.

17b. [ ] Line 15b is more than line 16c. On the top of page 1 of this form, check box 2, Disposable income is determined under 11 U.S.C. § 1325(b)(3). Go to Part 3 and fill out Official Form 22C-2: Calculation of Disposable Income. On line 35 of that form, copy your current monthly income from line 14 above.

Part 3: Calculate Your Commitment Period Under 11 U.S.C. § 1325(b)(4)

18. Copy your total average monthly income from line 11. .... 18. \$ \_\_\_\_\_

19. Deduct the marital adjustment if it applies. If you are married, your spouse is not filing with you, and you contend that calculating the commitment period under 11 U.S.C. § 1325(b)(4) allows you to deduct part of your spouse's income, copy the amount from line 13d.

If the marital adjustment does not apply, fill in 0 on line 19a. 19a. — \$ \_\_\_\_\_

Subtract line 19a from line 18. 19b. \$ \_\_\_\_\_

20. Calculate your current monthly income for the year. Follow these steps:

20a. Copy line 19b.. ..... 20a. \$ \_\_\_\_\_

Multiply by 12 (the number of months in a year). x 12

20b. The result is your current monthly income for the year for this part of the form. 20b. \$ \_\_\_\_\_

20c. Copy the median family income for your state and size of household from line 16c..... \$ \_\_\_\_\_

21. How do the lines compare?

[ ] Line 20b is less than line 20c. On the top of page 1 of this form, check box 3, The commitment period is 3 years. Go to Part 4.

[ ] Line 20b is more than or equal to line 20c. On the top of page 1 of this form, check box 4, The commitment period is 5 years. Go to Part 4.

**Part 4: Sign Here**

By signing here, under penalty of perjury I declare that the information on this statement and in any attachments is true and correct.

**x** \_\_\_\_\_

Signature of Debtor 1

**x** \_\_\_\_\_

Signature of Debtor 2

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

If you checked 17a, do NOT fill out or file Official Form 22C-2: *Calculation of Disposable Income*.

If you checked 17b, fill out Official Form 22C-2: *Calculation of Disposable Income* and file it with this form. On line 35 of that form, copy your current monthly income from line 14 above.

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2 \_\_\_\_\_  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_  
(If known)

Check if this is an amended filing

## Official Form 22C-2

### Chapter 13 Calculation of Your Disposable Income

12/13

To fill out this form, you will need your completed copy of Form 22C-1: *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period*.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

#### Part 1: Calculate Your Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 1-11. To find the IRS standards, either go to <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm> or ask for help at the clerk's office of the bankruptcy court.

Deduct the expense amounts set out in lines 1-11 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not include any operating expenses that you subtracted from income in lines 5 and 6 of Official Form 22C-1, and do not deduct any amounts that you subtracted from your spouse's income in line 13 of Form 22C-1.

If your expenses differ from month to month, enter the average expense.

Whenever this part of the form refers to *you*, it means both you and your spouse if Column B is filled in.

**1. The number of people used in determining your deductions from income**

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

**National Standards** You must use the IRS National Standards to answer the questions in lines 2-3.

**2. Food, clothing, and other items:** Using the number of people you entered in line 1 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items.

\$ \_\_\_\_\_

3. Out-of-pocket health care allowance: Using the number of people you entered in line 1 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories—people who are under 65 and people who are 65 or older—because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 18.

People who are under 65 years of age

3a. Out-of-pocket health care allowance per person \$
3b. Number of people who are under 65 X
3c. Subtotal. Multiply line 3a by line 3b. \$

Copy line 3c here -> \$

People who are 65 years of age or older

3d. Out-of-pocket health care allowance per person \$
3e. Number of people who are 65 or older X
3f. Subtotal. Multiply line 3d by 3e. \$

Copy line 3f here -> + \$

3g. Total. Add lines 3c and 3f.

\$ Copy total here -> 3g. \$

Local Standards You must use the IRS Local Standards to answer the questions in lines 5-11.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- Housing and utilities – Insurance and operating expenses
Housing and utilities – Mortgage or rent expenses

Refer to the U.S. Trustee website to answer the questions in lines 4-5. Go to http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm or ask for help at the clerk's office of the bankruptcy court.

4. Housing and utilities – Insurance and operating expenses: Using the number of people you entered in line 1, fill in the dollar amount listed for your county for insurance and operating expenses.

\$

5. Housing and utilities – Mortgage or rent expenses:

5a. Using the number of people you entered in line 1, fill in the dollar amount listed for your county for mortgage or rent expenses.

\$

5b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Next divide by 60.

Table with 2 columns: Name of the creditor, Average monthly payment. Includes a plus sign for summation.

5b. Total average monthly payment \$

Copy line 5b here -> - \$

Repeat this amount on line 29a.

5c. Net mortgage or rent expense.

Subtract line 5b (total average monthly payment) from line 5a (mortgage or rent expense). If this number is less than \$0, enter \$0.

\$

Copy 5c here ->

\$

6. If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing does not accurately compute the amount that applies to you, fill in any additional amount you claim.

\$

Explain why:

7. Local transportation expenses: Check the number of vehicles for which you claim an ownership or operating expense.

- 0. Go to line 10.
1. Go to line 8.
2 or more. Go to line 8.

8. Vehicle operation expense: Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the Operating Costs that apply for your Census region or metropolitan statistical area.

\$

9. Vehicle ownership or lease expense: Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

Vehicle 1 Describe Vehicle 1:

9a. Ownership or leasing costs using IRS Local Standard

9a. \$

9b. Average monthly payment for all debts secured by Vehicle 1. Do not include costs for leased vehicles.

To calculate the average monthly payment here and on line 9e, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Table with 2 columns: Name of each creditor for Vehicle 1, Average monthly payment

Copy 9b here ->

\$

Repeat this amount on line 29b.

9c. Net Vehicle 1 ownership or lease expense Subtract line 9b from line 9a. If this number is less than \$0, enter \$0.

9c. \$

Copy net Vehicle 1 expense here ->

\$

Vehicle 2 Describe Vehicle 2:

9d. Ownership or leasing costs using IRS Local Standard

9d. \$

9e. Average monthly payment for all debts secured by Vehicle 2. Do not include costs for leased vehicles.

Table with 2 columns: Name of each creditor for Vehicle 2, Average monthly payment

Copy here ->

\$

Repeat this amount on line 29c.

9f. Net Vehicle 2 ownership or lease expense Subtract line 9e from 9d. If this number is less than \$0, enter \$0.

9f. \$

Copy net Vehicle 2 expense here ->

\$

10. Public transportation expense: If you claimed 0 vehicles in line 7, using the IRS Local Standards, fill in the Public Transportation expense allowance regardless of whether you use public transportation.

\$

11. Additional public transportation expense: If you claimed 1 or more vehicles in line 7 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for Public Transportation.

\$



**Other Necessary Expenses**

In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

12. **Taxes:** The total monthly amount that you actually pay for federal, state and local taxes, such as income taxes, self-employment taxes, social security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. If you expect to receive a tax refund, you must divide the refund by 12 and subtract that number from the total monthly amount you actually pay for taxes. Do not include real estate or sales taxes. \$ \_\_\_\_\_

13. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs. Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings. \$ \_\_\_\_\_

14. **Life insurance:** The total monthly premiums that you pay for your term life insurance. Do not include premiums for insurance on your dependents, for whole life, or for any other form of life insurance. \$ \_\_\_\_\_

15. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments. Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 31. \$ \_\_\_\_\_

16. **Education:** The total monthly amount that you pay for education that is either required:  
 as a condition for your job, or  
 for your physically or mentally challenged dependent child if no public education is available for similar services. \$ \_\_\_\_\_

17. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool. Do not include payments for any elementary or secondary school education. \$ \_\_\_\_\_

18. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 3. Payments for health insurance or health savings accounts should be listed only in line 21. \$ \_\_\_\_\_

19. **Telecommunication services:** The total monthly amount that you pay for telecommunication services, such as pagers, call waiting, caller identification, special long distance, business internet service, and business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer. Do not include payments for basic home telephone, internet and cell phone service. Do not include self-employment expenses, such as those reported on line 5 of *Official Form 22C-1*, or any amount you previously deducted. + \_\_\_\_\_

20. **Add all of the expenses allowed under the IRS expense allowances.** Add lines 2 through 19. \$ \_\_\_\_\_

Additional Expense Deductions

These are additional deductions allowed by the Means Test.

Note: Do not include any expense allowances listed in lines 2-20.

21. Health insurance, disability insurance, and health savings account expenses. The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.

Health insurance \$
Disability insurance \$
Health savings account + \$
Total \$

Copy total here -> \$

Do you actually spend this total amount?

No. How much do you actually spend? \$
Yes

22. Continuing contributions to the care of household or family members. The 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.

\$

23. Protection against family violence. The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply.

\$

By law, the court must keep the nature of these expenses confidential.

24. Additional home energy costs. Your home energy costs are included in your non-mortgage housing and utilities allowance on line 4.

If you believe that you have home energy costs that are more than the home energy costs included in the non-mortgage housing and utilities allowance, then fill in the excess amount of home energy costs.

\$

You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary.

25. Education expenses for dependent children who are younger than 18. The monthly expenses (not more than \$147\* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school.

\$

You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 2-19.

\* Subject to adjustment on 4/01/13, and every 3 years after that for cases begun on or after the date of adjustment.

26. Additional food and clothing expense. The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards.

\$

To find the maximum additional allowance, either go to http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm or ask for help at the clerk's office of the bankruptcy court.

You must show that the additional amount claimed is reasonable and necessary.

27. Continuing charitable contributions. The amount that you will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 11 U.S.C. § 548(d)(3) and (4).

+ \$

Do not include any amount more than 15% of your gross monthly income.

28. Add all of the additional expense deductions.

\$

Add lines 21 through 27.

Deductions for Debt Payment

29. For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 29a through 29g.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

			Average monthly payment
<b>Mortgages on your home</b>			
29a. Copy line 5b here .....			\$ _____
<b>Loans on your first two vehicles</b>			
29b. Copy line 9b here. ....			\$ _____
29c. Copy line 9e here. ....			\$ _____
Name of each creditor for other secured debt	Identify property that secures the debt	Does payment include taxes or insurance?	
29d.		<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
29e.		<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
29f.		<input type="checkbox"/> No <input type="checkbox"/> Yes	+ \$ _____
29g. Total average monthly payment. Add lines 29a through 29f.....			\$ _____

Copy total here → \$ \_\_\_\_\_

30. Are any debts that you listed in line 29 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?

- No. Go to line 31.
- Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 29, to keep possession of your property (called the *cure amount*). Next, divide by 60 and fill in the information below.

Name of the creditor	Identify property that secures the debt	Total cure amount	Monthly cure amount
		\$ _____ ÷ 60 =	\$ _____
		\$ _____ ÷ 60 =	\$ _____
		\$ _____ ÷ 60 =	+ \$ _____
Total			\$ _____

Copy total here → \$ \_\_\_\_\_

31. Do you owe any priority claims — such as a priority tax, child support, or alimony — that are past due as of the filing date of your bankruptcy case? 11 U.S.C. § 507

- No. Go to line 32.
- Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 15.

Total amount of all past-due priority claims. \$ \_\_\_\_\_ ÷ 60 = \$ \_\_\_\_\_

32. Projected monthly Chapter 13 plan payment

Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. To find this information, go to http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm or ask for help at the clerk's office

Average monthly administrative expense

Form with fields for dollar amounts and a 'Copy total here' instruction with an arrow.

33. Add all of the deductions for debt payment. Add lines 29 through 32.

Total Deductions from Income

34. Add all of the allowed deductions.

Copy line 20, All of the expenses allowed under IRS expense allowances

Copy line 28, All of the additional expense deductions

Copy line 33, All of the deductions for debt payment

Total deductions

Form with fields for dollar amounts and a 'Copy total here' instruction with an arrow.

Part 2: Determine Your Disposable Income Under 11 U.S.C. § 1325(b)(2)

35. Copy your total current monthly income from line 14 of Form 22C-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period

Form with a dollar amount field.

36. Fill in any reasonably necessary income you receive for support for dependent children. The monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I of Form 22C-1, that you received in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child.

Form with a dollar amount field.

37. Fill in all qualified retirement deductions. The monthly total of all amounts that your employer withheld from wages as contributions for qualified retirement plans, as specified in § 541(b)(7) plus all required repayments of loans from retirement plans, as specified in § 362(b)(19).

Form with a dollar amount field.

38. Total of all deductions allowed under 11 U.S.C. § 707(b)(2)(A). Copy line 34.

Form with a dollar amount field.

39. Deduction for special circumstances. If special circumstances justify additional expenses and you have no reasonable alternative, describe the special circumstances and their expenses. You must give your case trustee a detailed explanation of the special circumstances and documentation for the expenses.

Table with 2 columns: Describe the special circumstance, Amount of expense. Rows 39a, 39b, 39c, 39d.Total.

Form with a 'Copy 39d here' instruction and a plus sign followed by a dollar amount field.

40. Total adjustments. Add lines 36 through 39d.

\$ \_\_\_\_\_ Copy total here → — \$ \_\_\_\_\_

41. Calculate your monthly disposable income under § 1325(b)(2). Subtract line 40 from line 35.

\$ \_\_\_\_\_

Part 3: Change in Income or Expenses

42. Change in income or expenses. If the income in Form 22C-1 or the expenses you reported in this form has changed or is virtually certain to change during the 12 months after the date you filed your bankruptcy petition, fill in the information below. For example, if the wages reported increased after you filed your petition, check 22C-1 in the first column, enter line 2 in the second column, explain why the wages increased, fill in when the increase occurred, and fill in the amount of the increase.

Form	Line	Reason for change	Date of change	Increase or decrease?	Amount of change
<input type="checkbox"/> B22C-1	_____		_____	<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> B22C-2				<input type="checkbox"/> Decrease	
<input type="checkbox"/> B22C-1	_____		_____	<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> B22C-2				<input type="checkbox"/> Decrease	
<input type="checkbox"/> B22C-1	_____		_____	<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> B22C-2				<input type="checkbox"/> Decrease	
<input type="checkbox"/> B22C-1	_____		_____	<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> B22C-2				<input type="checkbox"/> Decrease	

Part 4: Sign Here

By signing here, under penalty of perjury you declare that the information on this statement and in any attachments is true and correct.

X \_\_\_\_\_  
Signature of Debtor 1

X \_\_\_\_\_  
Signature of Debtor 2

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

## Official Forms 22C–1 and 22C–2

### Instructions for the Chapter 13 Statement of Your Current Monthly Income, Calculation of Commitment Period and Chapter 13 Calculation of Your Disposable Income

United States Bankruptcy Court

12/01/13

#### How to Fill Out these Forms

Official Forms 22C–1 and 22C–2 determine the period for your payments to creditors, how the amount you may be required to pay to creditors is established, and, in some situations, how much you must pay.

You must file 22C–1, the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 22C–1) if you are an individual and you are filing under chapter 13. This form will determine your current monthly income and determine whether your income is below the median income for households of the same size in your state. If your income is not above the median, you will not have to fill out the second form. Form 22C–1 also will determine your applicable commitment period—the time period for making payments to your creditors.

If your income is above the median, you must file the second form, 22C–2, *Chapter 13 Calculation of Your Disposable Income*. The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay unsecured debts. Your chapter 13 plan may be required to provide for payment of this amount toward unsecured debts.

Read each question carefully. You may not be required to answer every question on this form. The instructions will alert you if you may skip questions.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

If you and your spouse are filing together, you and your spouse must file a single statement.

#### Understand the terms used in these form

These forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. When information is needed about the spouses separately, the forms use *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

#### Things to remember when filling out this form

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.

**Do not file these instructions with your bankruptcy filing package. Keep them for your records.**

## COMMITTEE NOTE

Official Forms 22A-1, 22A-2, 22C-1, and 22C-2 are new versions of the “means test” forms used by individuals in chapter 7 and 13, formerly Official Forms 22A and 22C. The original forms were substantially revised as part of the Forms Modernization Project. Official Form 22B, used by individuals in chapter 11, has also been revised as part of the project, which was designed so that the individuals completing the forms would do so more accurately and completely.

The revised versions of the means test forms present the relevant information in a format different from the original forms. For chapter 7, former Official Form 22A has been split into two forms: 22A-1 and 22A-2. The first form, Official Form 22A-1, *Chapter 7 Statement of Your Current Monthly Income*, is to be completed by all chapter 7 debtors. It calculates a debtor’s current monthly income and compares that calculation to the median income for households of the same size in the debtor’s state. The second form, Official Form 22A-2, *Chapter 7 Means Test Calculation*, is to be completed only by those chapter 7 debtors whose income is above the applicable state median.

For chapter 13, there is a similar split of income and expense calculations. All chapter 13 debtors must complete Official Form 22C-1, *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period*, which calculates current monthly income and the plan commitment period. Debtors only need to complete the second form, Official Form 22C-2, *Chapter 13 Calculation of Your Disposable Income*, if their current monthly income exceeds the applicable median. Form 22C-2 calculates disposable income under 11 U.S.C. § 1325(b)(3), through a report of allowed expense deductions.

Line 60 of former Official Form 22C has not been repeated in Official Form 22C-2. This line allowed debtors to list, but not deduct from income, “Other Necessary Expense” items that are not included within the categories specified by the Internal Revenue Service. Because debtors are separately allowed to list—and deduct—any expenses arising from special circumstances, former Line 60 was rarely used.

Form 22C-2 also reflects the Supreme Court’s decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010). Adopting a forward-looking approach, the Court held in *Lanning* that the calculation of a chapter 13 debtor’s projected disposable income under § 1325(b)

required consideration of changes to income or expenses reported elsewhere on former Official Form 22C that, at the time of plan confirmation, had occurred or were virtually certain to occur. Those changes could result in either an increased or decreased projected disposable income. Because only debtors whose annualized current monthly income exceeds the applicable median family income have their projected disposable income determined by the information provided on Official Form 22C-2, only these debtors are required to provide the information about changes to income and expenses on Official Form 22C-2. Part 3 of Official Form 22C-2 provides for the reporting of those changes.

In reporting changes to income a debtor must indicate whether the amounts reported in Official Form 22C-1—which are monthly averages of various types of income received during the six months prior to the filing of the bankruptcy case—have already changed or are virtually certain to change during the 12 months following the filing of the bankruptcy petition. For each change, the debtor must indicate the line of Official Form 22C-1 on which the amount to be changed was reported, the reason for the change, the date of its occurrence, whether the change is an increase or decrease of income, and the amount of the change. Similarly, in reporting changes to expenses, a debtor must list changes to the debtor's actual expenditures reported in Part 1 of Official Form C-2 that are virtually certain to occur during the 12 months following the filing of the bankruptcy petition. With respect to the deductible amounts reported in Part 1 that are determined by the IRS national and local standards, only changed amounts that result from changed circumstances in the debtor's life—such as the addition of a family member or the surrender of a vehicle—should be reported. For each change in expenses, the same information required to be provided for income changes must be reported.

Unlike former Official Forms 22A and 22C, line 23 of Official Form 22A-2 and line 19 of Official Form 22C-2 permit the deduction of cell phone expenses necessary for the production of income if those expenses have not been reimbursed by the debtor's employer or deducted by the debtor in calculating net self-employment income. The same lines also state that expenses for internet service may be deducted as a telecommunication services expense only if necessary for the production of income. Under IRS guidelines adopted in 2011, expenses for home internet service used for other purposes are included in the Local Standards for Housing and utilities—Insurance and operating expenses.



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

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**MEMORANDUM**

**TO:** Hon. Mark R. Kravitz, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Hon. Reena Raggi, Chair  
Advisory Committee on Federal Rules of Criminal Procedure

**SUBJECT:** Report of the Advisory Committee on Criminal Rules

**DATE:** May 17, 2012

**I. Introduction**

The Advisory Committee on the Federal Rules of Criminal Procedure (“the Committee”) met on April 22-23, 2012, in San Francisco, California, and took action on a number of proposals.

\* \* \* \* \*

Report to the Standing Committee  
Advisory Committee on Criminal Rules

This report presents two action items. The Committee recommends that:

(1) a proposed amendment to Rule 11 (advice regarding immigration consequences of guilty plea), previously published for public comment, be approved as amended and transmitted to the Judicial Conference, and

(2) proposed amendments to Rules 5(d) and 58 (advice regarding consular notification at initial appearance), previously transmitted to the Supreme Court and returned, be approved as amended.

\* \* \* \* \*

**B. Rule 5 (providing that non-citizen defendants in felony cases be advised at initial appearance regarding consular notification)**

**Rule 58 (providing that non-citizen defendants in petty offense and misdemeanor cases be advised at initial appearance regarding consular notification)**

1. The purpose of the amendments

These parallel amendments were proposed by the Assistant Attorney General Lanny Breuer, who explained the relationship between the proposed rules and the treaty obligations of the United States. The Vienna Convention on Consular Relations is a multilateral treaty that sets forth basic obligations that a country has towards foreign nationals arrested within its jurisdiction. In order to facilitate the provision of consular assistance, Article 36 provides that detained foreign nationals must be advised of the opportunity to contact the consulate of their home country. Additionally, many bilateral agreements also require consular notification.

There has been substantial litigation over the manner in which Article 36 is to be implemented, whether the Vienna Convention creates rights that may be invoked by individuals in a judicial proceeding, and whether any possible remedy exists for defendants not appropriately notified of possible consular access at an early stage of a criminal prosecution. In *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006), the Supreme Court rejected a claim that suppression of evidence was an appropriate remedy for failure to inform a non-citizen defendant of his ability to have the consulate from his country of nationality notified of his arrest and detention. The

Report to the Standing Committee  
Advisory Committee on Criminal Rules

United States argued that the Vienna Convention does not create an enforceable individual right, but the Supreme Court did not rule on the preliminary question of whether the Vienna Convention creates an individual right, holding that regardless of the answer to that question, suppression of evidence is not an appropriate remedy for any violation.

General Breuer explained that notwithstanding the Justice Department's position that the Vienna Convention does not create an enforceable individual right, the executive has created policies and taken substantial measures to ensure that the United States fulfills its international obligations to other signatory states with regard to the Article 36 consular provisions. For example, the Justice Department has issued regulations that establish a uniform procedure for consular notification when non-citizens are arrested and detained by officers of the Department. See 28 CFR § 50.5. The Department of State has also undertaken multiple measures. It placed on a public website "Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them," which includes 24-hour contact telephone numbers that law enforcement officers can use to obtain advice and assistance. The Department of State published a Consular Notification and Access booklet, a Consular Notification Pocket Card for police use that has a model Vienna Convention consular notice, and a wall poster containing the consular notification in many languages that police can post in their facilities. The State Department regularly provides training about ensuring compliance. When a law enforcement authority fails to give notice to the consulate of a detained foreign national, the United States is committed to immediately informing the consulate, addressing the situation to the extent possible, and preventing a reoccurrence.

Assistant Attorney General Breuer urged that in addition to the measures already taken by the Departments of Justice and State, Rules 5 and 58 should be amended "to provide an additional assurance that the Vienna Convention obligations are satisfied." He characterized the proposed amendments as "responsible procedural means for further fulfilling the obligations of the United States under the Convention, without stepping into important questions of substantive rights that the Court has reserved for a later day."

## 2. The procedural history of the proposed amendments

At its meeting in April 2010, the Advisory Committee agreed to recommend to the Standing Committee that proposed amendments to Rules 5 and 58 be published for public

Report to the Standing Committee  
Advisory Committee on Criminal Rules

comment.<sup>2</sup> The Standing Committee approved the amendments for publication in August 2010. After a review of the public comments at its April meeting in 2011, the Advisory Committee voted to forward the amendments to the Standing Committee without change with the recommendation that they be approved and transmitted to the Judicial Conference.

The proposed amendments to Rules 5 and 58 were approved by the Standing Committee and the Judicial Conference in 2011, and subsequently transmitted to the Supreme Court.

In April 2012, the Supreme Court returned the Rule 5(d) and Rule 58 amendments to the Advisory Committee for further consideration.<sup>3</sup>

---

<sup>2</sup>The proposed amendments submitted to the Supreme Court included not only a change to Rule 5(d) providing for consular notice, but also a change to Rule 5(c) to clarify where an initial appearance should take place for persons who have been surrendered to the United States pursuant to an extradition treaty. The Supreme Court has transmitted the proposed amendment to Rule 5(c) to Congress.

<sup>3</sup>The proposed amendment to Rule 5(d) submitted to the Supreme Court and returned by it provided in pertinent part:

**(d) Procedure in a Felony Case.**

(1) *Advice.* If the defendant is charged with a felony, the judge must inform the defendant of the following:

\* \* \* \* \*

(F) if the defendant is held in custody and is not a United States citizen, that an attorney for the government or a federal law enforcement officer will:

- (i) notify a consular officer from the defendant's country of nationality that the defendant has been arrested if the defendant so requests; or
- (ii) make any other consular notification required by treaty or other international agreement.

The proposed amendment to Rule 58(b)(2) contained parallel language. The Supreme Court did not return the proposed amendment to Rule 5(c), which it transmitted to Congress.

### 3. The Advisory Committee's recommendation

At its April 2012 meeting, the Advisory Committee discussed possible concerns that the proposed rules could be construed (1) to intrude on executive discretion in conducting foreign affairs both generally and specifically as it pertains to deciding how to carry out treaty obligations, and (2) to confer on persons other than the sovereign signatories to treaties, specifically, criminal defendants, rights to demand compliance with treaty provisions.

Representatives of the Department of Justice informed the Committee that they had conferred with counterparts at the Department of State, and the Departments jointly proposed some changes to the proposed rule amendments to alleviate these concerns.

After extended discussion, the Committee concluded that Rules 5(d) and 58 should be amended to address the questions of consular notification, but that the amendments should be redrafted. Revisions to the text were approved unanimously, on the understanding that the language would have to be reviewed by the Standing Committee's style consultant, and that the Reporters would review the Committee Notes to determine whether any changes should be made in light of the return by the Supreme Court and the revised language. The final language for both the rule and committee note would be circulated electronically for Committee approval.

Following the meeting, revised rules and committee notes were circulated electronically to all members of the Advisory Committee, and they received unanimous approval.

As now amended, the proposed rules require the court to inform non-citizen defendants at their initial appearance that (1) they may request that a consular officer from their country of nationality be notified of their arrest, and (2) in some cases international treaties and agreements require consular notification without a defendant's request. The proposed rule does not, however, address the question whether treaty provisions requiring consular notification may be invoked by individual defendants in a judicial proceeding and what, if any, remedy may exist for a violation of Article 36 of the Vienna Convention. More particularly, the proposed rule does not itself create any such rights or remedies.

Although the changes in the text of the proposed rules and committee notes were intended to clarify but not alter the effect of the proposed amendments, members noted at the April meeting that given the return from the Supreme Court it might be appropriate to republish for additional public comment.

Report to the Standing Committee  
Advisory Committee on Criminal Rules

***Recommendation—The Advisory Committee recommends that the proposed amendments to Rules 5 and 58 be approved as amended.\****

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\* The Committee on Rules of Practice and Procedure voted to republish the proposed amendments for public comment.

**Rule 5. Initial Appearance**

\* \* \* \* \*

1

**(d) Procedure in a Felony Case.**

2

**(1) Advice.** If the defendant is charged with a felony, the judge must inform the defendant of the following:

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4

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\* \* \* \* \*

6

(D) any right to a preliminary hearing; ~~and~~

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(E) the defendant's right not to make a

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statement, and that any statement

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made may be used against the

10

defendant; and

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(F) if the defendant is held in custody and is

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not a United States citizen:

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(i) that the defendant may request that an

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attorney for the government or a

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federal law enforcement official notify

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a consular officer from the defendant's

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country of nationality that the

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defendant has been arrested; and

19                                   (ii) that even without the defendant's  
20   request, consular notification may be  
21   required by a treaty or other  
22   international agreement.  
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\* \* \* \* \*

**Committee Note**

**Subdivision (d)(1)(F).** Article 36 of the Vienna Convention on Consular Relations provides that detained foreign nationals shall be advised that they may have the consulate of their home country notified of their arrest and detention, and bilateral agreements with numerous countries require consular notification whether or not the detained foreign national requests it. Article 36 requires consular notification advice to be given “without delay,” and arresting officers are primarily responsible for providing this advice. See 28 C.F.R. § 50.5 (requiring consular notification advice to arrested foreign nationals by Department of Justice arresting officers).

Providing this advice at the initial appearance is designed, not to relieve law enforcement officers of that responsibility, but to provide additional assurance that U.S. treaty obligations are fulfilled, and to create a judicial record of that action.



3 FEDERAL RULES OF CRIMINAL PROCEDURE

At the time of this amendment, many questions remain unresolved by the courts concerning Article 36, including whether it creates individual rights that may be invoked in a judicial proceeding and what, if any, remedy may exist for a violation of Article 36. *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006). This amendment does not address those questions. More particularly, it does not create any such rights or remedies.

\* \* \* \* \*

1 **Rule 58. Petty Offenses and Other Misdemeanors**

2 \* \* \* \* \*

3 **“(b) Pretrial Procedure.**

4 \* \* \* \* \*

5 **(2) Initial Appearance.** At the defendant’s initial  
6 appearance on a petty offense or other misdemeanor  
7 charge, the magistrate judge must inform the defendant  
8 of the following:

9 \* \* \* \* \*

10 (F) the right to a jury trial before either  
11 a magistrate judge or a district judge –  
12 unless the charge is a petty offense;~~and~~

13 (G) any right to a preliminary hearing  
14 under Rule 5.1, and the general  
15 circumstances, if any, under which the  
16 defendant may secure pretrial release; and

17                   (H) if the defendant is held in custody  
18                   and is not a United States citizen:  
19                   (i) that the defendant may request that an  
20                   attorney for the government or a federal law  
21                   enforcement officer notify a consular officer  
22                   from the defendant's country of nationality that  
23                   the defendant has been arrested; and  
24                   (ii) that even without the defendant's request,  
25                   consular notification may be required by a  
26                   treaty or other international agreement.

#### COMMITTEE NOTE

**Section (b)(2)(H)** Article 36 of the Vienna Convention on Consular Relations provides that detained foreign nationals shall be advised that they may have the consulate of their home country notified of their arrest and detention, and bilateral agreements with numerous countries require consular notification whether or not the detained foreign national requests it. Article 36 requires consular notification advice to be given “without delay,” and arresting officers are primarily responsible for providing this advice. See 28 C.F.R. § 50.5 (requiring consular notification advice to arrested foreign nationals by Department of Justice arresting officers).

Providing this advice at the initial appearance is designed, not to relieve law enforcement officers of that responsibility, but to provide additional assurance that our treaty obligations are fulfilled, and to create a judicial record of that action.

At the time of this amendment, many questions remain unresolved by the courts concerning Article 36, including whether it creates individual rights that may be invoked in a judicial proceeding and what, if any, remedy may exist for a violation of Article 36. *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006). This amendment does not address those questions. More particularly, it does not create any such rights or remedies.

\* \* \* \* \*

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

MARK R. KRAVITZ  
CHAIR

PETER G. McCABE  
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CHAIRS OF ADVISORY COMMITTEES

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DAVID G. CAMPBELL  
CIVIL RULES

REENA RAGGI  
CRIMINAL RULES

SIDNEY A. FITZWATER  
EVIDENCE RULES

**MEMORANDUM**

**TO:** Honorable Mark R. Kravitz, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Honorable Sidney A. Fitzwater, Chair  
Advisory Committee on Evidence Rules

**DATE:** May 3, 2012

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

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**I. Introduction**

The Advisory Committee on Evidence Rules (the “Committee”) met on April 4, 2012 in Dallas at the SMU Dedman School of Law.

\* \* \* \* \*

The Committee also seeks approval of four proposals (three of which are related) for release for public comment. The first is an amendment to Rule 801(d)(1)(B)—the hearsay exemption for certain prior consistent statements—to provide that prior consistent statements are admissible under the hearsay exemption whenever they would otherwise be admissible to rehabilitate the witness’s credibility. The other three proposals amend Rules 803(6)-(8)—the hearsay exceptions for business records, absence of business records, and public records—to eliminate an ambiguity uncovered

during the restyling project and clarify that the opponent has the burden of showing that the proffered record is untrustworthy.

\* \* \* \* \*

### **B. Proposed Amendment to Evidence Rule 801(d)(1)(B)**

After receiving guidance from the Standing Committee at its January 2012 meeting regarding whether to consider further a proposal to amend Rule 801(d)(1)(B)—the hearsay exemption for certain prior consistent statements—the Committee considered this matter at its Spring 2012 meeting. With one member abstaining, the Committee approved an amendment to Rule 801(d)(1)(B) and voted to recommend to the Standing Committee that it be released for public comment. The Committee also approved an addition to the Committee Note to emphasize that the amended Rule is not to be used to expand the admissibility of prior consistent statements or to allow the admission of cumulative consistent statements.

The proposal to amend Rule 801(d)(1)(B) originated with Judge Frank W. Bullock, Jr., when he was a member of the Standing Committee. Judge Bullock proposed that Rule 801(d)(1)(B) be amended to provide that prior consistent statements are admissible under the hearsay exemption whenever they would be admissible to rehabilitate the witness's credibility. Under the current Rule, some prior consistent statements offered to rehabilitate a witness's credibility—specifically, those that rebut a charge of recent fabrication or improper influence or motive—are also admissible substantively. But other rehabilitative statements—such as those that explain a prior inconsistency or rebut a charge of faulty recollection—are not admissible under the hearsay exemption, but only for rehabilitation. There are two basic practical problems in distinguishing between substantive and credibility use as applied to prior consistent statements. First, the necessary jury instruction is almost impossible for jurors to follow. The prior consistent statement is of little or no use for credibility unless the jury believes it to be true. Second, and for similar reasons, the distinction between substantive and impeachment use of prior consistent statements has little, if any, practical effect. The proponent has already presented the witness's trial testimony, so the prior consistent statement ordinarily adds no real substantive effect to the proponent's case.

At its Spring 2011 meeting, the Committee unanimously agreed that the current distinction between substantive and impeachment use of prior consistent statements is impossible for jurors to follow. But some members were concerned that any expansion of the hearsay exemption to cover all prior consistent statements admissible for rehabilitation might be taken as a signal that the Rules were taking a more liberal attitude toward admitting prior consistent statements generally. The Committee resolved to consider the amendment further, and also to seek the input of Public Defenders, the Department of Justice, and state court judges on the merits of amending Rule 801(d)(1)(B). Before the Fall 2011 meeting, the Department of Justice submitted a letter favoring the amendment, and the Public Defender submitted a letter opposing the amendment.

Report to the Standing Committee  
Advisory Committee on Evidence Rules

At its Fall 2011 meeting, the Committee again considered the proposed amendment and resolved to seek further input. Pursuant to the Committee's recommendation, the Reporter worked with Dr. Timothy Reagan, the FJC representative, to prepare a survey of district judges concerning the need for and merits of the proposed amendment. The proposal was also sent to the ABA Litigation Section, the American College of Trial Lawyers, the NACDL, and other interested groups. And, as noted, the Committee sought guidance from the Standing Committee at its January 2012 meeting.

At its Spring 2012 meeting, the Committee voted unanimously, with one member abstaining, to approve an alternate draft amendment to Rule 801(d)(1)(B) and to recommend to the Standing Committee that it be released for public comment. The Reporter prepared the alternate draft based on a suggestion from a district judge who had responded to the FJC survey. The judge had encouraged the Committee to retain language familiar and comfortable to judges and practitioners, such as the phrase "motive to fabricate." The Committee also approved an addition to the Committee Note to emphasize that the amended Rule is not to be used to expand the admissibility of prior consistent statements or to allow the admission of cumulative consistent statements. The proposed Rule and Committee Note are set out in an appendix to this Report.

**Recommendation: The Committee recommends that the proposed amendment to Evidence Rule 801(d)(1)(B) be approved for release for public comment.**

### **C. Proposed Amendments to Evidence Rules 803(6)-(8)**

The restyling project uncovered an ambiguity in Rules 803(6)-(8)—the hearsay exceptions for business records, absence of business records, and public records. These exceptions originally set out admissibility requirements and then provided that a record that met these requirements, although hearsay, was admissible “unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.” The Rules did not specifically state which party had the burden of showing trustworthiness or untrustworthiness.

The restyling project initially sought to clarify this ambiguity by providing that a record that fit the other admissibility requirements would satisfy the exception if “the opponent does not show that” the source of information or the method or circumstances of preparation indicate lack of trustworthiness. But this proposal did not go forward as part of restyling because research into the case law indicated that the change would be substantive. While most courts impose the burden of proving untrustworthiness on the opponent, a few courts require the proponent to prove that the record is trustworthy. Because the proposal would have changed the law in at least one court, it was deemed substantive and therefore outside the scope of the restyling project.

When the Standing Committee approved the Restyled Rules, several members suggested that this Committee consider making the minor substantive change to clarify that the opponent has the burden of showing untrustworthiness. At the Committee’s Spring 2011 meeting, however, a majority opposed amending these Rules, concluding that most courts were construing the Rules as they were intended to be read, i.e., placing the burden of proving untrustworthiness on the opponent.

But at the Committee’s Spring 2012 meeting, the Reporter informed the Committee that the Texas restyling committee had unanimously concluded that restyled Rules 803(6) and (8) could be interpreted as making substantive changes by placing the burden on the *proponent* of the evidence to show trustworthiness. The Committee voted unanimously, with one member abstaining, to recommend to the Standing Committee that the proposed amendments to Rules 803(6)-(8) be published for public comment. The proposed Rules and Committee Notes are set out in an appendix to this Report.

**Recommendation: The Committee recommends that the proposed amendments to Evidence Rules 803(6)-(8) be approved for release for public comment.**

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### Committee Note

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Rule 801(d)(1)(B), as originally adopted, provided for substantive use of certain prior consistent statements of a witness subject to cross-examination. As the Advisory Committee noted, “[t]he prior statement is consistent with the testimony given on the stand, and, if the opposite party wishes to open the door for its admission in evidence, no sound reason is apparent why it should not be received generally.”

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Though the original Rule 801(d)(1)(B) provided for substantive use of certain prior consistent statements, the scope of that Rule was limited. The Rule covered only those consistent statements that were offered to rebut charges of recent fabrication or improper motive or influence. The Rule did not provide for admissibility of, for example, consistent statements that are probative to explain what otherwise appears to be an inconsistency in the witness’s testimony. Nor did it include consistent statements that would be probative to rebut a charge of faulty recollection. Thus, the Rule left many prior consistent statements potentially admissible only for the limited purpose of rehabilitating a witness’s credibility. The original Rule also led to some conflict in the cases; some courts distinguished between substantive and rehabilitative use for prior consistent statements, while others appeared to hold that prior consistent statements must be admissible under Rule 801(d)(1)(B) or not at all.

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The amendment provides that prior consistent statements are exempt from the hearsay rule whenever they are admissible to rehabilitate the witness. It extends the argument made in the original Advisory Committee Note to its logical conclusion. As commentators have stated, “[d]istinctions between the substantive and nonsubstantive use of prior consistent statements are normally distinctions without practical meaning,” because “[j]uries have a very difficult time understanding an instruction about the difference between substantive and nonsubstantive use.” Hon. Frank W. Bullock, Jr. and Steven Gardner, *Prior Consistent Statements and the Premotive Rule*, 24 Fla.St. L.Rev. 509, 540 (1997). See also *United States v. Simonelli*, 237 F.3d 19, 27 (1<sup>st</sup> Cir. 2001) (“the line between substantive use of prior statements and their use to buttress credibility on rehabilitation is one which lawyers and judges draw but which may well be meaningless to jurors”).

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The amendment does not change the traditional and well-

64 accepted limits on bringing prior consistent statements before the  
65 factfinder for credibility purposes. It does not allow impermissible  
66 bolstering of a witness. As before, prior consistent statements under  
67 the amendment may be brought before the factfinder only if they  
68 properly rehabilitate a witness whose credibility has been attacked.  
69 As before, to be admissible for rehabilitation, a prior consistent  
70 statement must satisfy the strictures of Rule 403. As before, the trial  
71 court has ample discretion to exclude prior consistent statements that  
72 are cumulative accounts of an event. The amendment does not make  
73 any consistent statement admissible that was not admissible  
74 previously — the only difference is that all prior consistent  
75 statements otherwise admissible for rehabilitation are now admissible  
76 substantively as well.

**Appendix to Report to the Standing Committee from the Advisory  
Committee on Evidence Rules**

**June 2012**

**Advisory Committee on Evidence Rules  
Proposed Amendment: Rule 803(6)**

1     **Rule 803. Exceptions to the Rule Against Hearsay— Regardless**  
2     **of Whether the Declarant is Available as a Witness**

3             The following are not excluded by the rule against hearsay,  
4     regardless of whether the declarant is available as a witness.

5   \* \* \*

6             **(6)     *Records of a Regularly Conducted Activity.*** A record  
7     of an act, event, condition, opinion, or diagnosis if:

8                     **(A)**     the record was made at or near the time by -  
9   or from information transmitted by - someone  
10   with knowledge;

11                    **(B)**     the record was kept in the course of a  
12   regularly conducted activity of a business,  
13   organization, occupation, or calling, whether  
14   or not for profit;

15                    **(C)**     making the record was a regular practice of  
16   that activity;

17                    **(D)**     all these conditions are shown by the  
18   testimony of the custodian or another

19 qualified witness, or by a certification that  
20 complies with Rule 902(11) or (12) or with a  
21 statute permitting certification; and  
22 (E) ~~neither~~ the opponent does not show that the  
23 source of information ~~nor~~ or the method or  
24 circumstances of preparation indicate a lack of  
25 trustworthiness.

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### Committee Note

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The Rule has been amended to clarify that if the proponent has established the stated requirements of the exception — regular business with regularly kept record, source with personal knowledge, record made timely, and foundation testimony or certification — then the burden is on the opponent to show a lack of trustworthiness. While most courts have imposed that burden on the opponent, some have not. It is appropriate to impose the burden of proving untrustworthiness on the opponent, as the basic admissibility requirements are sufficient to establish a presumption that the record is reliable.

The opponent, in meeting its burden, is not necessarily required to introduce affirmative evidence of untrustworthiness. For example, the opponent might argue that a record was prepared in anticipation of litigation and is favorable to the preparing party without needing to introduce evidence on the point. A determination of untrustworthiness necessarily depends on the circumstances.



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### **Committee Note**

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The Rule has been amended to clarify that if the proponent has established the stated requirements of the exception — set forth in Rule 803(6) — then the burden is on the opponent to show a lack of trustworthiness. The amendment maintains consistency with the proposed amendment to the trustworthiness clause of Rule 803(6).

**Appendix to Report to the Standing Committee from the Advisory  
Committee on Evidence Rules**

**June 2012**

**Advisory Committee on Evidence Rules  
Proposed Amendment: Rule 803(8)**

1     **Rule 803. Exceptions to the Rule Against Hearsay— Regardless**  
2     **of Whether the Declarant is Available as a Witness**

3             The following are not excluded by the rule against hearsay,  
4     regardless of whether the declarant is available as a witness.

5   \* \* \*

6             **(8)     *Public Records.*** A record or statement of a public  
7     office if:

8                     **(A)**     it sets out:

9                                     **(i)**     the office's activities;

10                                   **(ii)**    a matter observed while under a legal  
11   duty to report, but not including, in a  
12   criminal case, a matter observed by  
13   law-enforcement personnel; or

14                                   **(iii)**   in a civil case or against the  
15   government in a criminal case, factual  
16   findings from a legally authorized  
17   investigation; and

18



19 (B) neither the opponent does not show that the  
20 source of information ~~nor~~ or other  
21 circumstances indicate a lack of  
22 trustworthiness.

23 \* \* \*

24  
25 **Committee Note**

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27 The Rule has been amended to clarify that if the proponent  
28 has established that the record meets the stated requirements of the  
29 exception — prepared by a public office and setting out information  
30 as specified in the Rule — then the burden is on the opponent to  
31 show a lack of trustworthiness. While most courts have imposed that  
32 burden on the opponent, some have not. Public records have  
33 justifiably carried a presumption of reliability, and it should be up to  
34 the opponent to “demonstrate why a time-tested and carefully  
35 considered presumption is not appropriate.” *Ellis v. International*  
36 *Playtex, Inc.*, 745 F.2d 292, 301 (4th Cir. 1984). The amendment  
37 maintains consistency with the proposed amendment to the  
38 trustworthiness clause of Rule 803(6).

39  
40 The opponent, in meeting its burden, is not necessarily  
41 required to introduce affirmative evidence of untrustworthiness. For  
42 example, the opponent might argue that a record was prepared in  
43 anticipation of litigation and is favorable to the preparing party  
44 without needing to introduce evidence on the point. A determination  
45 of untrustworthiness necessarily depends on the circumstances.  
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## **Procedures for the Judicial Conference’s Committee on Rules of Practice and Procedure and Its Advisory Rules Committees**

(as codified in *Guide to Judiciary Policy*, Vol. 1, § 440)

### **§ 440 Procedures for Committees on Rules of Practice and Procedure**

This section contains the “Procedures for the Judicial Conference’s Committee on Rules of Practice and Procedure and Its Advisory Rules Committees,” last amended in September 2011. [JCUS-SEP 2011](#), p. \_\_.

#### **§ 440.10 Overview**

The Rules Enabling Act, [28 U.S.C. §§ 2071–2077](#), authorizes the Supreme Court to prescribe general rules of practice and procedure and rules of evidence for the federal courts. Under the Act, the Judicial Conference must appoint a standing committee, and may appoint advisory committees to recommend new and amended rules. Section 2073 requires the Judicial Conference to publish the procedures that govern the work of the Committee on Rules of Practice and Procedure (the “Standing Committee”) and its advisory committees on the Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure and on the Evidence Rules. See [28 U.S.C. § 2073\(a\)\(1\)](#). These procedures do not limit the rules committees’ authority. Failure to comply with them does not invalidate any rules committee action. Cf. [28 U.S.C. § 2073\(e\)](#).

#### **§ 440.20 Advisory Committees**

##### **§ 440.20.10 Functions**

Each advisory committee must engage in “a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use” in its field, taking into consideration suggestions and recommendations received from any source, new statutes and court decisions affecting the rules, and legal commentary. See [28 U.S.C. § 331](#).

##### **§ 440.20.20 Suggestions and Recommendations**

Suggestions and recommendations on the rules are submitted to the Secretary of the Standing Committee at the Administrative Office of the United States Courts, Washington, D.C. The Secretary will acknowledge the suggestions or recommendations and refer them to the appropriate advisory committee. If the Standing Committee takes formal action on them, that action will be reflected in the Standing Committee’s minutes, which are posted on the [judiciary’s rulemaking website](#).

### § 440.20.30 Drafting Rule Changes

(a) Meetings

Each advisory committee meets at the times and places that the chair designates. Advisory committee meetings must be open to the public, except when the committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the reason. Each meeting must be preceded by notice of the time and place, published in the *Federal Register* and on the [judiciary's rulemaking website](#), sufficiently in advance to permit interested persons to attend.

(b) Preparing Draft Changes

The reporter assigned to each advisory committee should prepare for the committee, under the direction of the committee or its chair, draft rule changes, committee notes explaining their purpose, and copies or summaries of written recommendations and suggestions received by the committee.

(c) Considering Draft Changes

The advisory committee studies the rules' operation and effect. It meets to consider proposed new and amended rules (together with committee notes), whether changes should be made, and whether they should be submitted to the Standing Committee with a recommendation to approve for publication. The submission must be accompanied by a written report explaining the advisory committee's action and its evaluation of competing considerations.

### § 440.20.40 Publication and Public Hearings

(a) Publication

Before any proposed rule change is published, the Standing Committee must approve publication. The Secretary then arranges for printing and circulating the proposed change to the bench, bar, and public. Publication should be as wide as possible. The proposed change must be published in the *Federal Register* and on the [judiciary's rulemaking website](#). The Secretary must:

- (1) notify members of Congress, federal judges, and the chief justice of each state's highest court of the proposed change, with a link to the [judiciary's rulemaking website](#); and
- (2) provide copies of the proposed change to legal-publishing firms with a request to timely include it in publications.

(b) Public Comment Period

A public comment period on the proposed change must extend for at least six months after notice is published in the *Federal Register*, unless a shorter period is approved under paragraph (d) of this section.

(c) Hearings

The advisory committee must conduct public hearings on the proposed change unless eliminating them is approved under paragraph (d) of this section or not enough witnesses ask to testify at a particular hearing. The hearings are held at the times and places that the advisory committee's chair determines. Notice of the times and places must be published in the *Federal Register* and on the [judiciary's rulemaking website](#). The hearings must be recorded. Whenever possible, a transcript should be produced by a qualified court reporter.

(d) Expedited Procedures

The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained. The Standing Committee may also eliminate public notice and comment for a technical or conforming amendment if the Committee determines that they are unnecessary. When an exception is made, the chair must advise the Judicial Conference and provide the reasons.

#### **§ 440.20.50 Procedures After the Comment Period**

(a) Summary of Comments

When the public comment period ends, the reporter must prepare a summary of the written comments received and of the testimony presented at public hearings. If the number of comments is very large, the reporter may summarize and aggregate similar individual comments, identifying the source of each one.

(b) Advisory Committee Review; Republication

The advisory committee reviews the proposed change in light of any comments and testimony. If the advisory committee makes substantial changes, the proposed rule should be republished for an additional period of public comment unless the advisory committee determines that republication would not be necessary to achieve adequate public comment and would not assist the work of the rules committees.

(c) Submission to the Standing Committee

The advisory committee submits to the Standing Committee the proposed change and committee note that it recommends for approval. Each submission must:

- (1) be accompanied by a separate report of the comments received;
- (2) explain the changes made after the original publication; and
- (3) include an explanation of competing considerations examined by the advisory committee.

#### **§ 440.20.60 Preparing Minutes and Maintaining Records**

(a) Minutes of Meetings

The advisory committee's chair arranges for preparing the minutes of the committee meetings.

(b) Records

The advisory committee's records consist of:

- written suggestions received from the public;
- written comments received from the public on drafts of proposed rules;
- the committee's responses to public suggestions and comments;
- other correspondence with the public about proposed rule changes;
- electronic recordings and transcripts of public hearings (when prepared);
- the reporter's summaries of public comments and of testimony from public hearings;
- agenda books and materials prepared for committee meetings;
- minutes of committee meetings;

- approved drafts of rule changes; and
  - reports to the Standing Committee.
- (c) Public Access to Records

The records must be posted on the [judiciary's rulemaking website](#), except for general public correspondence about proposed rule changes and electronic recordings of hearings when transcripts are prepared. This correspondence and archived records are maintained by the Administrative Office of the United States Courts and are available for public inspection. Minutes of a closed meeting may be made available to the public but with any deletions necessary to avoid frustrating the purpose of closing the meeting under § 440.20.30(a).

## § 440.30 Standing Committee

### § 440.30.10 Functions

The Standing Committee's functions include:

- (a) coordinating the work of the advisory committees;
- (b) suggesting proposals for them to study;
- (c) considering proposals they recommend for publication for public comment; and
- (d) for proposed rule changes that have completed that process, deciding whether to accept or modify the proposals and transmit them with its own recommendation to the Judicial Conference, recommit them to the advisory committee for further study and consideration, or reject them.

### § 440.30.20 Procedures

- (a) Meetings

The Standing Committee meets at the times and places that the chair designates. Committee meetings must be open to the public, except when the Committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the reason. Each meeting must be preceded by notice of the time and place, published in the *Federal Register* and on the [judiciary's rulemaking website](#), sufficiently in advance to permit interested persons to attend.

(b) Attendance by the Advisory Committee Chairs and Reporters

The advisory committees' chairs and reporters should attend the Standing Committee meetings to present their committees' proposed rule changes and committee notes, to inform the Standing Committee about ongoing work, and to participate in the discussions.

(c) Action on Proposed Rule Changes or Committee Notes

The Standing Committee may accept, reject, or modify a proposed change or committee note, or may return the proposal to the advisory committee with instructions or recommendations.

(d) Transmission to the Judicial Conference

The Standing Committee must transmit to the Judicial Conference the proposed rule changes and committee notes that it approves, together with the advisory committee report. The Standing Committee's report includes its own recommendations and explains any changes that it made.

### **§ 440.30.30 Preparing Minutes and Maintaining Records**

(a) Minutes of Meetings

The Secretary prepares minutes of Standing Committee meetings.

(b) Records

The Standing Committee's records consist of:

- the minutes of Standing Committee and advisory committee meetings;
- agenda books and materials prepared for Standing Committee meetings;
- reports to the Judicial Conference; and
- official correspondence about rule changes, including correspondence with advisory committee chairs.

(c) Public Access to Records

The records must be posted on the judiciary's rulemaking website, except for official correspondence about rule changes. This correspondence and archived records are maintained by the Administrative Office of the United

States Courts and are available for public inspection. Minutes of a closed meeting may be made available to the public but with any deletions necessary to avoid frustrating the purpose of closing the meeting under § 440.30.20(a).



## COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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