

# Some Examples from the Proposed New Federal Rules of Bankruptcy

By Joseph Kimble

**F**or almost three years, the Advisory Committee on Bankruptcy Rules—within the Committee on Rules of Practice and Procedure—has been at work “re-styling” (redrafting) those rules for clarity, consistency, and readability. I’m one of three drafting consultants on the project, along with Bryan A. Garner and Joseph Spaniol. The first set of revisions, the 1000 and 2000 series, was released for public comment in August.<sup>1</sup>

This is the fifth and last set of federal rules to be redrafted over the last 25 years, following the appellate rules, criminal rules, civil rules, and evidence rules. The goal has always been to improve the rules without changing substantive meaning, and I believe we have achieved that goal: the restyled rules have been generally well received, and we have had to fix only a small number of inadvertent substantive changes during all that time. What’s more, they were far outnumbered by the inconsistencies, uncertainties, and ambiguities that were uncovered in the redrafting process. My book *Seeing Through Legalese: More Essays on Plain Language* includes many, many before-and-after examples from the civil rules and evidence rules.

The bankruptcy rules are a distinct challenge because they must take into account the Bankruptcy Code itself and the extensive set of bankruptcy forms. For one thing, that means far more cross-references than we would like. It is tough work requiring multiple drafts back and forth among the three consultants and then more drafts after review by the substantive experts—the reporters for the advisory committee and the committee members.

Despite the challenges, I hope you’ll agree that the revised versions below are dramatically improved. As I’ve grown older and

marginally wiser, I’ve come to recognize that structural elements are every bit as important to clarity as linguistic elements. Notice, for instance, what a difference it makes to use more subparts, headings, and vertical lists. I note for the record that the restyled civil rules used more than twice as many headings as the old rules. That may have been their single biggest improvement.

At any rate, you can look at these few examples and judge for yourself. (You’d see even greater differences in longer examples.) Of course, the revised versions could change somewhat after public comment. ■



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## ENDNOTE

1. *Proposed Amendments Published for Public Comment*, United States Courts, available at <<https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>> [<https://perma.cc/FXC7-EEEV>] (website accessed October 20, 2020). The public-comment period runs until February 16, 2021.

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“Plain Language,” edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 36 years. To contribute an article, contact Prof. Kimble at WMU–Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at [kimblej@cooley.edu](mailto:kimblej@cooley.edu). For an index of past columns, visit [www.michbar.org/plainlanguage](http://www.michbar.org/plainlanguage).

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<p><b>Rule 1003. Involuntary Petition</b></p>	<p><b>Rule 1003. Involuntary Petition: Transferred Claims; Joining Other Creditors; Additional Time to Join</b></p>
<p>(a) TRANSFEROR OR TRANSFEREE OF CLAIM. A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.</p>	<p><b>(a) Transferred Claims.</b> An entity that has transferred or acquired a claim for the purpose of commencing an involuntary case under Chapter 7 or Chapter 11 is not a qualified petitioner. A petitioner that has transferred or acquired a claim must attach to the petition and to any copy:</p> <ol style="list-style-type: none"> <li>(1) all documents evidencing the transfer, whether it was unconditional, for security, or otherwise; and</li> <li>(2) a signed statement that:             <ol style="list-style-type: none"> <li>(A) affirms that the claim was not transferred for the purpose of commencing the case; and</li> <li>(B) sets forth the consideration for the transfer and its terms.</li> </ol> </li> </ol>

<p><b>Rule 1014. Dismissal and Change of Venue</b></p>	<p><b>Rule 1014. Transferring a Case to Another District; Dismissing a Case Improperly Filed</b></p>
<p>(a) [omitted]</p>	<p>(a) [omitted]</p>
<p>(b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME DEBTOR OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS. If petitions commencing cases under the Code or seeking recognition under chapter 15 are filed in different districts by, regarding, or against (1) the same debtor, (2) a partnership and one or more of its general partners, (3) two or more general partners, or (4) a debtor and an affiliate, the court in the district 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 any of the cases should proceed. The court may so determine on motion and after a hearing, with notice to the following entities in the affected cases: the United States trustee, entities entitled to notice under Rule 2002(a), and other entities as the court directs. The court may order the parties to the later-filed cases not to proceed further until it makes the determination.</p>	<p><b>(b) Petitions Involving the Same or Related Debtors Filed in Different Districts.</b></p> <ol style="list-style-type: none"> <li><b>(1) Scope.</b> This Rule 1014(b) applies if petitions commencing cases or seeking recognition under Chapter 15 are filed in different districts by, regarding, or against:             <ol style="list-style-type: none"> <li>(A) the same debtor;</li> <li>(B) a partnership and one or more of its general partners;</li> <li>(C) two or more general partners; or</li> <li>(D) a debtor and an affiliate.</li> </ol> </li> <li><b>(2) Court Action.</b> The court in the district in which the first petition is filed may determine the district or districts in which the cases should proceed in the interest of justice or for the parties' convenience. The court may do so on timely motion and after a hearing on notice to:             <ul style="list-style-type: none"> <li>• the United States trustee;</li> <li>• entities entitled to notice under Rule 2002(a); and</li> <li>• other entities as the court orders.</li> </ul> </li> <li><b>(3) Later-Filed Petitions.</b> The court may order the parties in a case commenced by a later-filed petition not to proceed further until the motion is decided.</li> </ol>

<b>Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court</b>	<b>Rule 1015. Consolidating or Jointly Administering Cases Pending in the Same District</b>
(a) [omitted]	(a) [omitted]
<p>(b) <b>CASES INVOLVING TWO OR MORE RELATED DEBTORS.</b> If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under § 522(6)(2) of the Code and the other has elected the exemptions under § 522(6)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).</p>	<p><b>(b) Jointly Administering Cases Involving Related Debtors; Exemptions of Spouses; Protective Orders to Avoid Conflicts of Interest.</b></p> <p><b>(1) In General.</b> The court may order joint administration of the estates in a joint case or in two or more cases pending in the court if they are brought by or against:</p> <ul style="list-style-type: none"> <li>(A) spouses;</li> <li>(B) a partnership and one or more of its general partners;</li> <li>(C) two or more general partners; or</li> <li>(D) a debtor and an affiliate.</li> </ul> <p><b>(2) Potential Conflicts of Interest.</b> Before issuing a joint-administration order, the court must consider how to protect the creditors of different estates against potential conflicts of interest.</p> <p><b>(3) Exemptions in Cases Involving Spouses.</b> If spouses have filed separate petitions, with one electing exemptions under § 522(6)(2) and the other under § 522(b)(3), and the court orders joint administration, that order must:</p> <ul style="list-style-type: none"> <li>(A) set a reasonable time for the debtors to elect the same exemptions; and</li> <li>(B) advise the debtors that if they fail to do so, they will be considered to have elected exemptions under § 522(b)(2).</li> </ul>

<b>Rule 1020. Small Business Chapter 11 Reorganization Case</b>	<b>Rule 1020. Designating a Chapter 11 Case as a Small Business Case*</b>
(a)–(b) [omitted]	(a)–(b) [omitted]
<p>(c) <b>APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS.</b> If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case shall proceed as a small business case only if, and from the time when, the court enters an order determining that the committee has not been sufficiently active and representative to provide effective oversight of the debtor and that the debtor satisfies all the other requirements for being a small business. A request for a determination under this subdivision may be filed by the United States trustee or a party in interest only within a reasonable time after the failure of the committee to be sufficiently active and representative. The debtor may file a request for a determination at any time as to whether the committee has been sufficiently active and representative.</p>	<p><b>(c) When a Committee of Unsecured Creditors Has Been Appointed.</b></p> <p><b>(1) Determining Whether the Committee Is Active and Representative.</b> If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case may proceed as a small business case* only if, and from the time when, the court determines that:</p> <ul style="list-style-type: none"> <li>(A) the committee is not sufficiently active and representative in providing effective oversight of the debtor; and</li> <li>(B) the debtor satisfies all other requirements for a small business debtor.*</li> </ul> <p><b>(2) Motion for a Court Determination.</b> Within a reasonable time after the committee has become insufficiently active or representative, the United States trustee or a party in interest may move for a determination by the court. The debtor may do so at any time.</p>

\*Could not be hyphenated. Defined terms in the Code.

<b>Rule 2003. Meeting of Creditors or Equity Security Holders</b>	<b>Rule 2003. Meeting of Creditors or Equity Security Holders*</b>
<p>(a) DATE AND PLACE. Except as otherwise provided in § 341(e) of the Code, in a chapter 7 liquidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 40 days after the order for relief. In a chapter 12 family farmer debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 35 days after the order for relief. In a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 50 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.</p>	<p><b>(a) Date and Place of the Meeting.</b></p> <p><b>(1) <i>Date.</i></b> Unless § 341(e) applies, the United States trustee must call a meeting of creditors to be held:</p> <p>(A) in a Chapter 7 or 11 case, no fewer than 21 days and no more than 40 days after the order for relief;</p> <p>(B) in a Chapter 12 case, no fewer than 21 days and no more than 35 days after the order for relief; or</p> <p>(C) in a Chapter 13 case, no fewer than 21 days and no more than 50 days after the order for relief.</p> <p><b>(2) <i>Effect of a Motion or an Appeal.</i></b> The United States trustee may set a later date for the meeting if there is a motion to vacate the order for relief, an appeal from such an order, or a motion to dismiss the case.</p> <p><b>(3) <i>Place; Possible Change in the Meeting Date.</i></b> The meeting may be held at a regular place for holding court. Or the United States trustee may designate any other place in the district that is convenient for the parties in interest. If the designated meeting place is not regularly staffed by the United States trustee or an assistant who may preside, the meeting may be held no more than 60 days after the order for relief.</p>

\*Could not be hyphenated. Another defined term in the Code.

<b>Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest</b>	<b>Rule 2015.3. Reporting Financial Information About Entities in Which a Chapter 11 Estate Holds a Substantial or Controlling Interest</b>
<p>(a)–(b) [omitted]</p>	<p>(a)–(b) [omitted]</p>
<p>(c) PRESUMPTION OF SUBSTANTIAL OR CONTROLLING INTEREST; JUDICIAL DETERMINATION. For purposes of this rule, an entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling interest. An entity in which the estate controls or owns less than a 20 percent interest shall be presumed not to be an entity in which the estate has a substantial or controlling interest. Upon motion, the entity, any holder of an interest therein, the United States trustee, or any other party in interest may seek to rebut either presumption, and the court shall, after notice and a hearing, determine whether the estate's interest in the entity is substantial or controlling.</p>	<p><b>(c) Presumption of a Substantial or Controlling Interest.</b></p> <p><b>(1) <i>When a Presumption Applies.</i></b> Under this Rule 2015.3, the estate is presumed to have a substantial or controlling interest in an entity of which it controls or owns at least a 20% interest. Otherwise, the estate is presumed not to have a substantial or controlling interest.</p> <p><b>(2) <i>Rebutting the Presumption.</i></b> The entity, any holder of an interest in it, the United States trustee, or any other party in interest may move to rebut either presumption. After notice and a hearing, the court must determine whether the estate's interest in the entity is substantial or controlling.</p>