

More examples from the proposed new federal rules of bankruptcy

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This column picks up where the November 2020 column left off. As I said then, for the last few years, the Advisory Committee on Bankruptcy Rules (within the Standing Committee on Federal Rules) has been at work “restyling” (redrafting) those rules for clarity, consistency, and readability. I’m one of three drafting consultants on the project, along with Bryan Garner and Joseph Spaniol.

In November 2020, I provided a group of examples from the 1000 and 2000 series. In August 2021, the 3000 through 6000 series were released for public comment¹—hence this new group of examples.

This is the fifth and last set of federal rules to be redrafted over the last 20 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. Many experts and groups are reviewing the drafts to make sure that the substance isn’t changed. And you can judge the improvements for yourself.

If you compare the wording, you should generally find more logical organization, shorter sentences, better sentence structure, the omission of unnecessary words, and so on. Individual changes may seem trivial, but they add up to a considerable gain in clarity.

Even if you don’t carefully compare the wording, just notice what a difference it makes to use more subparts, headings, and vertical lists.² They may make the rules look longer, but their text is invariably shorter. These are the kinds of changes that lawyers should be able to make in any of their documents—without great difficulty and to the readers’ great benefit.

ENDNOTES

¹ *Proposed Amendments Published for Comment*, United States Courts, available at https://www.uscourts.gov/sites/default/files/preliminary_draft_of_proposed_amendments_2021_0.pdf.

² The formatting could not be exactly replicated in the pages that follow.

Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence	Rule 3002.1. Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case
(a)–(e) [omitted]	(a)–(e) [omitted]
<p>(f) NOTICE OF FINAL CURE PAYMENT. Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.</p>	<p>(f) Notice of the Final Cure Payment.</p> <p>(1) Contents of a Notice. Within 30 days after the debtor completes all payments under a Chapter 13 plan, the trustee must file a notice:</p> <p>(A) stating that the debtor has paid in full the amount required to cure any default on the claim; and</p> <p>(B) informing the claim holder of its obligation to file and serve a response under (g).</p> <p>(2) Serving the Notice. The notice must be served on:</p> <ul style="list-style-type: none"> • the claim holder; • the debtor; and • the debtor's attorney. <p>(3) The Debtor's Right to File. The debtor may file and serve the notice if:</p> <p>(A) the trustee fails to do so; and</p> <p>(B) the debtor contends that the final cure payment has been made and all plan payments have been completed.</p>

Rule 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor	Rule 3005. Filing a Proof of Claim or Accepting or Rejecting a Plan by a Surety, Endorser, Guarantor, or Other Codebtor
(a) [omitted]	(a) [omitted]
<p>(b) FILING OF ACCEPTANCE OR REJECTION; SUBSTITUTION OF CREDITOR. An entity which has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in the entity's own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice prior to confirmation of a plan of the creditor's intention to act in the creditor's own behalf, the creditor shall be substituted for the obligor with respect to that claim.</p>	<p>(b) Accepting or Rejecting a Plan in a Creditor's Name. An entity that has filed a proof of claim on behalf of a creditor under (a) may accept or reject a plan in the creditor's name. If the creditor's name is unknown, the entity may do so in its own name. But the creditor must be substituted for the entity on that claim if the creditor:</p> <p>(1) files a proof of claim within the time permitted by Rule 3003(c); or</p> <p>(2) files notice, before the plan is confirmed, of an intent to act in the creditor's own behalf.</p>

<p>Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case</p>	<p>Rule 3015. Chapter 12 or 13—Time to File a Plan; Nonstandard Provisions; Objection to Confirmation; Effect of Confirmation; Modifying a Plan</p>
(a)–(g) [omitted]	(a)–(g) [omitted]
<p>(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.</p>	<p>(h) Modifying a Plan After It Is Confirmed.</p> <p>(1) Request to Modify a Plan After It Is Confirmed. A request to modify a confirmed plan under § 1229 or § 1329 must identify the proponent and include the proposed modification. Unless the court orders otherwise for creditors not affected by the modification, the clerk or the court's designee must:</p> <p>(A) give the debtor, trustee, and creditors at least 21 days' notice, by mail, of the time to file objections and the date of any hearing;</p> <p>(B) send a copy of the notice to the United States trustee; and</p> <p>(C) include a copy or summary of the modification.</p> <p>(2) Objecting to a Modification. Rule 9014 governs an objection to a proposed modification. An objection must be filed and served on:</p> <ul style="list-style-type: none"> • the debtor; • the trustee; and • any other entity the court designates. <p>A copy must also be sent to the United States trustee.</p>

<p>Rule 4004. Grant or Denial of Discharge</p>	<p>Rule 4004. Granting or Denying a Discharge</p>
(a) [omitted]	(a) [omitted]
<p>(b) EXTENSION OF TIME.</p> <p>(1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.</p> <p>(2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.</p>	<p>(b) Extending the Time to File an Objection.</p> <p>(1) Motion Before the Time Expires. On a party in interest's motion and after notice and a hearing, the court may, for cause, extend the time to object to a discharge. The motion must be filed before the time has expired.</p> <p>(2) Motion After the Time Has Expired. After the time to object has expired and before a discharge is granted, a party in interest may file a motion to extend the time to object if:</p> <p>(A) the objection is based on facts that, if learned after the discharge is granted, would provide a basis for revocation under § 727(d), and the movant did not know those facts in time to object; and</p> <p>(B) the movant files the motion promptly after learning those facts.</p>

Rule 5003. Records Kept By the Clerk	Rule 5003. Records to Be Kept by the Clerk
(a)–(d) [omitted]	(a)–(d) [omitted]
<p>(e) REGISTER OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS AND CERTAIN TAXING AUTHORITIES. The United States or the state or territory in which the court is located may file a statement designating its mailing address. The United States, state, territory, or local governmental unit responsible for collecting taxes within the district in which the case is pending may also file a statement designating an address for service of requests under § 505(b) of the Code, and the designation shall describe where further information concerning additional requirements for filing such requests may be found. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes the mailing addresses designated under the first sentence of this subdivision, and a separate register of the addresses designated for the service of requests under § 505(b) of the Code. The clerk is not required to include in any single register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.</p>	<p>(e) Register of Mailing Addresses of Federal and State Governmental Units and Certain Taxing Authorities.</p> <p>(1) <i>In General.</i> The United States—or a state or a territory where the court is located—may file a statement designating its mailing address. A taxing authority (including a local taxing authority) may also file a statement designating an address for serving requests under § 505(b). The designation must describe where to find further information about additional requirements for serving a request.</p> <p>(2) <i>Register of Mailing Address.</i></p> <p>(A) <i>In General.</i> In the form and manner prescribed by the Director of the Administrative Office of the United States Courts, the clerk must keep a register of the mailing addresses of the governmental units listed in the first sentence of (1) and a separate register containing the addresses of taxing authorities for serving requests under § 505(b).</p> <p>(B) <i>Number of Entries.</i> The clerk need not include in any register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. But if more than one mailing address is included, the clerk must also include information that would enable a user to determine when each address applies. Mailing to only one applicable address provides effective notice.</p> <p>(C) <i>Keeping the Register Current.</i> The clerk must update the register annually, as of January 2 of each year.</p> <p>(D) <i>Mailing Address Presumed to Be Proper.</i> A mailing address in the register is conclusively presumed to be proper. But a failure to use that address does not invalidate notice that is otherwise effective under applicable law.</p>

Rule 5005. Filing and Transmittal of Papers	Rule 5005. Filing Papers and Sending Copies to the United States Trustee
<p>(a) FILING.</p> <p>(1) <i>Place of Filing.</i> The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices.</p> <p>(2) <i>Electronic Filing and Signing.</i></p> <p>(A) <i>By a Represented Entity—Generally Required; Exceptions.</i> An entity represented by an attorney shall file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.</p> <p>(B) <i>By an Unrepresented Individual—When Allowed or Required.</i> An individual not represented by an attorney:</p> <p>(i) may file electronically only if allowed by court order or by local rule; and</p> <p>(ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.</p> <p>(C) <i>Signing.</i> A filing made through a person’s electronic filing account and authorized by that person, together with that person’s name on a signature block, constitutes the person’s signature.</p> <p>(D) <i>Same as a Written Paper.</i> A paper filed electronically is a written paper for purposes of these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.</p>	<p>(a) Filing Papers.</p> <p>(1) <i>With the Clerk.</i> Except as provided in 28 U.S.C. § 1409, the following papers required to be filed by these rules must be filed with the clerk in the district where the case is pending:</p> <ul style="list-style-type: none"> • lists; • schedules; • statements; • proofs of claim or interest; • complaints; • motions; • applications; • objections; and • other papers. <p>The clerk must not refuse to accept for filing any petition or other paper solely because it is not in the form required by these rules or any local rule or practice.</p> <p>(2) <i>With a Judge of the Court.</i> A judge may personally accept for filing a paper listed in (1). The judge must note on the paper the date of filing and promptly send it to the clerk.</p> <p>(3) <i>Electronic Filing and Signing.</i></p> <p>(A) <i>By a Represented Entity—Generally Required; Exceptions.</i> An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.</p> <p>(B) <i>By an Unrepresented Individual—When Allowed or Required.</i> An individual not represented by an attorney:</p> <p>(i) may file electronically only if allowed by court order or by local rule; and</p> <p>(ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.</p> <p>(C) <i>Signing.</i> A filing made through a person’s electronic filing account and authorized by that person, together with that person’s name on a signature block, constitutes the person’s signature.</p> <p>(D) <i>Same as a Written Paper.</i> A paper filed electronically is a written paper for purposes of these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107.</p>