

Amendments to the Federal Rules of Bankruptcy Procedure to take effect December 1, 2018

The following amendments to the Federal Rules of Bankruptcy Procedure and the national and director's forms will take effect December 1, 2018.

The following summary is provided as a courtesy to the bar and SHOULD NOT be a substitute for thorough review of the text of the rule amendments, available at <http://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments>.

Bankruptcy Rule 3002.1 requires creditors with claims secured by a debtor's personal residence to provide notice of post-petition payment changes, fees, expenses, and charges incurred. The rule amendments add flexibility regarding notices of payment changes for home equity lines of credit, allow the trustee, debtor or a party in interest to object to payment changes by filing a timely ***Motion to determine validity of payment change***, and expand the category of parties authorized to request that the court determine whether payment of any claimed fee, expense or charge is required.

Amended Rules 5005(a)(2) and 8011 make electronic filing mandatory in all districts for all parties represented by an attorney. Paper filing is allowed for good cause.

Amended Rule 7004 updates a cross-reference to FRCP 4(d)(5) (concerning the effect of a defendant's waiver of service).

Amended Rule 7062 retains the 14-day automatic stay of judgment in adversary proceedings, notwithstanding an amendment to FRCP 62 that increases the stay to 30 days to coincide with the 28-day deadline for filing post-judgment motions in district court.

Amendments to Rules 8007, 8010, 8021, and 9025 allow a party to stay enforcement of a judgment in an adversary proceeding by posting a "bond or other security." This amendment is not substantive, but rather, is intended to "broaden and modernize" the terms "supersedeas bond" and "surety" currently used in these rules.

Amended Rule 8002 addresses the timeliness of appeals. Rule 8002(a) provides that a notice of appeal must be filed within 14 days after the entry of a judgment and a new subparagraph (5) defines "entry" of judgment, for purposes of calculating that time period.

Amended Rule 8002(c) establishes filing and service requirements for inmate appeals, which are timely if deposited in the institution's mail system on or before the last day for filing the appeal. An inmate's notice of appeal must include the inmate's declaration or notarized statement of the mailing date of the notice and prepayment of first-class

postage. A **new Director's Form, Form 4170** (Declaration of Inmate Filing) provides a suggested form of declaration. An **amendment to Official Form 417A (Notice of Appeal)** directs inmate filers to the new Director's Form.

Amended Rule 8006(c) establishes the process for filing a joint certification for direct appellate review and adds a new subsection allowing the bankruptcy court to file a supplemental statement about the merits of the parties' joint certification. The new subsection is a counterpart to existing subsection (e)(2), which allows the parties to file a similar statement when the court certifies direct review on its own motion.

Amended Rules 8013 (motions), 8015 (briefs), 8016 (cross-appeals), and 8022 (rehearing) establish length limits for motions, briefs, and other pleadings filed in bankruptcy appeals, converting current page limits to word-count limits for documents prepared using a computer. A **new appendix to Part VIII** of the Bankruptcy Rules lists all of the length limits in a single chart. A conforming amendment is made to the certificate of compliance in Official Form 417C.

Amended Rule 8017 permits a district court or bankruptcy appellate panel to prohibit or strike an amicus brief if the filing would result in the disqualification of a judge.

New Rule 8018.1 is the latest rule to address the impact of the Supreme Court's decision in *Stern v. Marshall*, 564 U.S. 462 (2011) on bankruptcy court jurisdiction to enter final judgments. The new rule authorizes a district court to treat a bankruptcy court's judgment as proposed findings of fact and conclusions of law if the bankruptcy court did not have the constitutional authority to enter a final judgment.

Official Forms 411A and 411B (General and Special Power of Attorney forms).

The Judicial Conference approved reissuing the bankruptcy general and special power of attorney forms as **Official Forms 411A and 411B** to conform to Bankruptcy Rule 9010(c), which requires execution of a power of attorney on an Official Form.

Bankruptcy cases commenced after December 1, 2018, must use the new forms. Cases pending on December 1 must use the new forms "insofar as just and practicable."