February 9, 2023

Submitted Electronically

Judicial Conference of the United States
Committee on Rules of Practice and Procedure
Advisory Committee on Bankruptcy Rules
Washington, DC 20544

Re: Proposed Amendments to the Federal Rules of Bankruptcy Procedure
Docket ID: USC-RULES-BK-2022-0002

Ladies and Gentlemen:

The National Bankruptcy Conference ("NBC") is a voluntary, non-partisan, not-for-profit organization composed of about 60 of the nation's leading bankruptcy judges, professors, and practitioners. The NBC has provided advice to Congress regarding bankruptcy legislation for approximately 80 years. We enclose a Fact Sheet providing further information about the NBC.

A subgroup of the NBC's Court System and Bankruptcy Administration Committee (or Courts Committee for short) reviewed the proposed changes (both amendments and restyling revisions) to certain of the Federal Rules of Bankruptcy Procedure that were circulated in preliminary draft form via a request for comment package prepared by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States and dated August 2022. The subgroup prepared draft comments regarding the proposed changes, which draft was then approved by the full Courts Committee and the NBC's Executive Committee. The final set of NBC Courts Committee comments are detailed in this letter.

Consistent with the scope of the restyling project, we have generally limited our comments about the proposed restyled rules to drafting concerns specifically associated with the proposed restyling changes. Nevertheless, we note that certain of the existing rules may contain substantive problems that would be carried forward through the restyling process. To address this possibility, it may be appropriate to include commentary that any preexisting substantive issues are not being ratified through the adoption of restyled rules.

Restyled Rules Generally

- The commentary accompanying the restyled rules makes clear that the revisions are intended to be stylistic only and without substantive effect. We suggest that the promulgation of the final rules include a stronger feature than commentary – such as a specific rule of interpretation or a declarative statement in the Supreme Court order adopting the new rules – to make clear that the restyled rules must be interpreted to avoid any substantive difference with the current rules.

- The restyled rules, without explanation, shift the capitalization used in the current rules for such words as "title," "chapter," "subchapter," and the like. This change creates

discord between the rules and the statute (the latter of which consistently uses the lower-case style used in the current rules, *see, e.g.*, 11 U.S.C. §§ 101(19), (30), (35A)(F), (51C); 103(g)). This unnecessary asymmetry between the statute and the rules is likely to exacerbate inconsistent use of capitalized words in briefing and opinions. Moreover, the titles, sections, and other subdivisions of the United States Code are not proper nouns. Because we believe the rules should track the statute enacted by Congress and perceive harm resulting from this change with no offsetting benefit, we suggest this stylistic shift be rejected.

- Although the addition of bullet points to certain of the rules might improve their visual appearance, we believe that it will be difficult and cumbersome for courts and parties to try to correctly cite any given bullet point. We therefore recommend that this change be rejected and that more traditional numbered or lettered designations be used for the items in these lists. There are also some instances where very short lists are now given bullets (e.g., in 7004(a)(2), 8002(a)(5)(A)(ii), 8009(a)(1)(B), 8011(a)(2)(ii)-(iii), 8015(a)(7)(B)(i), 9001(b)(5)(B), and 9013(b)), which adds visual clutter more than it improves anything.

- In some of the restyled rules (e.g., 7010, 8003(a)(3)(A), 8005(a), 8015(h), 9010(c), etc.), reference is made to a specific form. Forms change on a different schedule than do the rules, creating the possibility that a renumbering of the form may make these references invalid. The current rules make no mention of a specific form number. Presumably you have thought through the cross-referencing problem, but we highlight it as a concern. The restyled rules are also inconsistent regarding whether to reference an "Official Form" (e.g., 7010) or just a "Form" (e.g., 8003(a)(3)(A), 8006(c)(1)); we suggest selecting one option and using consistently throughout all restyled rules.

- In some of the restyled rules (e.g., 8013(a)(2)(C), 9006(d)(1)), there are references to "affidavit". Under 28 U.S.C. § 1746, however, declarations under penalty of perjury are acceptable. We suggest adding "or qualifying declaration" after each instance of "affidavit" throughout.

Restyled Rule 7001

- The designations for subparts have been changed from numbers to letters throughout. For example, Rule 7001(1) will now be Rule 7001(a). The change may make this rule consistent with the rest of the restyled rules, but it will also make it more difficult for practicing judges and lawyers to use existing case law and other authorities with citations using the current nomenclature. For example, someone researching an issue regarding what would be the new Rule 7001(g) about equitable relief would have to know to look for authority under the old Rule 7001(7). Although the problem may not be great, the gains from the redesignation are only stylistic. We suggest not making this set of changes.

- In (i), the reference to "any proceeding" is confusing as it suggests the need for a separate "proceeding" to exist from the declaratory-judgment action, rather than that there may be a single, combined "proceeding." We suggest changing "any proceeding" to "any subject" or "any matter".

Restyled Rule 7002

The restyling uses the phrase "civil rule" in place of "Federal Rule of Civil Procedure." But "civil rule" does not have accepted meaning. It could mean all rules that are not related to criminal law. It could mean a rule under the civil law, as opposed to the common law. Although the restyling improves the concision of Rule 7002, the more precise "Federal Rule of Civil Procedure" will avoid any confusion.

Restyled Rule 7004

- In (a), the restyling vastly improves the existing language. To avoid confusion and to keep the restyling as consistent with the current provision, however, the restyled version might retain the existing structure and order. That is, (a)(1) is the "in general" as it is now. The next paragraph, (a)(2), is personally serving a summons and delivering a summons, thereby combining what is now (a)(3) and the second bullet point of (a)(2). The first bullet point of (a)(2) becomes a new paragraph (a)(3). Keeping the existing structure then makes it clear the reference to delivery of the summons is to the person who will serve the summons. The current structure makes it unclear to whom the clerk is "to deliver" the summons.

- In the prefatory language of (b), the restyling arguably includes a substantive change in the language. The existing rule clearly authorizes that service can be done by mail by stating that "service may be made" in that manner. By contrast, the restyled language states a copy of "a summons and complaint may be served" through first-class mail. "Service" is a term of art. The restyled language does not clearly state the mailing a copy of the summons and complaint is an alternative form of service. The new title implies as much, but it would be better if this point was express rather than implied.

- In (b) throughout, the use of an em dash, rather than a comma or colon, to separate the service directions for a defined class (e.g., in (b)(1), "an individual except an infant or an incompetent person—by mailing . . .") is jarring and awkward. We suggest a comma (as in the current rules) or colon instead.

- In (b)(2)(B), the reference to "that person" is ambiguous (is it the infant or incompetent person or the person referenced in (b)(2)(A)?). We suggest drafting this to specifically identify which person is referenced.

- In (b)(4)(A)(i), the reference to "where the ***case*** is filed" is unclear and could be read to reference the underlying bankruptcy case, rather than an adversary proceeding, which

likely is not intended. We suggest using "action" (as in the current rule) or "proceeding" instead.

- In (b)(5)(A), there is a footnote call number with no accompanying text.

- Regarding (b)(6)(B), the current rule instructs to make mail service on a state or municipal corporation to the person as prescribed by the law of the state. If state law does not designate to whom service is to be made, then mail service goes to the chief executive officer. The restyling provides, in the absence of a state law designation, the plaintiff ***may*** serve the chief executive officer. This permissive language fails to make clear that such service would be effective. The word "may" should be "must".

- In (b)(9), the restyled rule only requires "addressing" the mail and not its actual mailing. Also, the phrase "with the qualification that" seems unnecessary. We suggest the entire paragraph could be even shorter and clearer thusly: "(9) the debtor, after a petition has been filed or served upon a debtor and until the case is dismissed or closed, by mailing the copy to the address shown on the debtor's petition or the address the debtor specifies in a filed writing;".

- In (e)(1), there is potential pronoun ambiguity regarding the "they"; we suggest using "the documents" or "the summons and complaint" instead.

- In (f) generally, it is not clear why the subdivisions of this part are denominated using capital letters instead of numerals like the rest of Rule 7004.

- In (f)(A), it is odd to reference "a defendant ***in*** a bankruptcy case" since the underlying case itself has no such party "in" it; we suggest using "regarding" instead. Even that concept (and thus the existing rule) is strange since there technically is no "defendant" connected to the main bankruptcy case. Consider whether "defendant or other party in interest" would be better

- In (f)(C), the statutory term of art "arising under" is changed to just "under". We suggest using the statutory term "arising under" as is done in the current rule.

- To combine our preceding comments about (f) and to better track the language of 28 U.S.C. § 1334(a-(b), we suggest the list after the colon should read:

  (1) regarding a case under the Code [note again that this concept is unusual when coupled with "defendant"];
  (2) in a civil proceeding arising under the Code; or
  (3) in a civil proceeding arising in or related to a case under the Code.

Restyled Rule 7007.1

In (a), the wording could be further streamlined by changing "that identifies" to "identifying" and "states" to "stating".

Restyled Rule 7008

There is potential pronoun ambiguity regarding the "it"; we suggest using "the case" or "such case".

Restyled Rules 7008 and 7012(b)

The current rules use the plural phrase "final orders" while the restyled rules use the singular "a final order." Although it is unusual there would be more than one "final order" in an adversary proceeding, Rule 9014 makes it possible that all the Part VII rules could be applied in a contested matter. It is not inconceivable that there could be more than one "final order" in that context. To avoid any accidental substantive change, it is best if the plural form be retained.

Restyled Rule 7010

We suggest changing "Official Form 416" to "Form 416", consistent with the usage throughout the remainder of the restyled rules.

Restyled Rule 7016

- In (a), there appears to be a typo – the missing space in "anadversary".

- In (b)(2), there is potential pronoun ambiguity regarding the "it", especially given the use of "its" in the prefatory clause; we suggest just using "the proceeding" as in the current rule.

Restyled Rule 7041

- In (b), the wording could be further streamlined by changing "that sets" to "setting".

- Also regarding (b), the current rule says for dismissal of an adversary proceeding that was an objection to discharge, the court may set out "terms and conditions which the court deems proper." The restyled rule requires "a court order that sets out any conditions for the dismissal." Although we appreciate how the restyling tries to cut down on redundancy, it might be working a substantive change since not all "terms" are "conditions." To avoid any implication that the restyled rule limits what the court can do in a dismissal order, the "terms and conditions" language should be retained.

Restyled Rule 7054

In (b)(2)(A), to be consistent with usage elsewhere, the word "Rule" where it appears twice should be replaced with "Fed. R. Civ. P." The restyled rules only use the word "Rule" to refer to other parts of the Federal Rules of Bankruptcy Procedure. *See, e.g.*, restyled Rule 7058.

Restyled Rule 7058

The wording could be substantially streamlined by changing "must be read as referring" to just "is".

Restyled Part VIII Generally

- There is inconsistency in the usage of "district clerk or BAP clerk" (8004(b)(2)), "BAP clerk or district clerk" (8003(d)(2)), and "district or BAP clerk" (8004(c)(2), 8011(d)(2), 8013(a)(1), 8014(f), 8024(a)-(c)). We suggest choosing one formulation and using it consistently.

- There is a redundancy in the current rules carried forward in the restyling. In many places, the restyled Rules refer to the object of the Part as a "judgment, order, or decree." In several places, however, the term "judgment" is omitted when a reference to an interlocutory order is intended. *See, e.g.*, Restyled Rules 8002(a)(2), 8002(b)(1), 8002(b)(3), 8002(d)(3), 8004(a), 8004(b)(1)(E) & 8004(e). Indeed, an Official Form 424 specifically cleaves a distinction between "final judgment[s], order[s], or decree[s]" and "interlocutory order[s] or decree[s]." The term "judgment," however, is already defined in two places in Part IX and thus presumptively applicable in Part VIII. Rule 9001(7) states that "'Judgment' means any appealable order." In addition, when a Bankruptcy Rule incorporates a rule from the Federal Rules of Civil Procedure, and that incorporated rule uses the term "judgment," Rule 9002(5), states that "'Judgment' includes any order appealable to an appellate court." Likewise, Federal Rule of Civil Procedure 54(b) states that "'Judgment' as used in these rules includes a decree and any order from which an appeal lies." There are at least two possible solutions to this redundancy. The first is to conform Part VIII's use of "judgment, order, or decree" to the Part IX definition in the many places in which the Part uses that trio of words. Another solution might be to exempt the word "judgment" in Part VIII from the definitions found in Part IX. Rule 8001(b) might be divided into two subsections, designating what is now Rule 8001(b) as Rule 8001(b)(1), and adding a new paragraph (2) stating: "The definitions of "judgment" appearing in Part IX of these rules do not apply in this Part."

Restyled Rule 8002

- In (a)(1), we suggest retaining "Fourteen Day Period" in the caption. The existing rule refers to a 14-day period, and given the stark difference between the normal 30-day rule in federal civil cases, the retention of the notice is beneficial to users.

- In (a)(2), we suggest substituting "upon entry" for "on the date of and after the entry".

- In (b)(3), there is potential ambiguity regarding the "It"; we suggest sticking with "The notice or amended notice" used in the current rule.

- In (d)(1), there is a footnote call number with no accompanying text.

- In (d)(2)(A), "an automatic stay" is changed to "the automatic stay". We suggest continuing with "an" since the automatic stays under Bankruptcy Code sections 362, 922, 1201, and 1301 are distinct stays rather than part of a singular stay.

- In (d)(2)(E), there appears to be a typo – the missing space in "statementunder".

Restyled Rule 8003

- In (a)(2), the isolated reference to "any other step" is ambiguous and question begging (other than what?). We suggest being more precise by using a specific description as in the current rule.

- In (d)(1), the "it" in the final sentence is potentially ambiguous; we suggest just using "the notice" as in the current rule.

Restyled Rule 8004

In (a)(1), there is a reference to 28 U.S.C. § 158(a)(3) with respect to interlocutory orders. That section, however, is the source of confusion due to potential redundancy. Paragraph (3) of section 158(a) states that district courts have jurisdiction to hear:

> (3) with leave of the court, from other interlocutory orders and decrees;

But, immediately after paragraph (3), the text of section 158(a) returns to the left margin and states:

> and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title.

It is unclear what this language adds, and, since it is separate from paragraph (a)(3),[1] whether the proposes restyled rule reaches it.

Obviously, changes to the rules cannot clarify an ambiguous statute. Perhaps restyled Rule 8004(a)(1) could be redrafted to simply eliminate the reference to paragraph (3) while retaining the reference to the interlocutory nature of the order appealed. This could be done as follows:

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[1] Collier's Pamphlet edition states:

> The intent of Congress regarding the eleven words preceding this footnote is unclear. Pub. L. No. 103-394 (1994) stated that "Section 158(a) of title 28, United States Code, is amended by striking 'from' the first place it appears and all that follows through 'decrees,' and inserting [paragraphs (1) through (3)]". Because "decrees," appeared twice in the affected sentence, the instance immediately preceding this footnote having been the second of the two, it cannot be determined with certitude that Congress intended for these eleven words to be removed.

1 Collier Pamphlet Edition 28 USC § 158 (2022).

To appeal under 28 U.S.C. § 158(a) from an interlocutory order requiring leave of court, a party must file a motion including . . . .

The reason for this subtle shift could be emphasized in a committee note.

Restyled Rule 8005

In (d), the "it" is potentially ambiguous; we suggest just using "the motion" as in the current rule.

Restyled Rule 8006

- In (d), the limiting concept of "only" in the current rule has dropped out. The restyled rule does not expressly limit the referenced authority to the court where the matter is pending and is at least ambiguous about whether, if that court "may" certify a direct appeal, "may" a different court do so, too? We suggest retaining the existing "only" limiter from the current rule.

- In (g), there is a reference to a request for leave to take a direct appeal "in accordance with Fed. R. App. P. 6(c)." FRAP 6(c), however, has no provision or reference to a request for leave. The provisions and content of a request (the term used in the statute) for a direct appeal are found in the statute, 28 U.S.C. § 158(d)(2). The cross-reference should be to the statute.

Restyled Rule 8007

In (c), there appears to be a typo – the missing space in "withthe".

Restyled Rule 8008

- In (a), unnumbered text in the current rule – "or state that the motion raises a substantial issue" – is set apart and given a new paragraph number (4), indicating that it is a separate requirement. All three prior paragraphs, however, require the bankruptcy court to state the action it would take on the motion if it had the authority to decide it. The sense of current paragraph (3) might be read to require the bankruptcy court to do more than just state the motion presents "a substantial issue." To conform to the prior three paragraphs, perhaps the new paragraph could be rewritten as: "(4) state that the motion raises a substantial issue, and state whether the court would grant or deny the motion if the court had the authority to do so."

- In (c), the "but it" phrase – which admittedly tracks the current rule – is quite ambiguous, particularly given the earlier "it" referring to the bankruptcy court. We suggest changing this to "but the district court or BAP" for clarity and to eliminate the ambiguity.

Restyled Rule 8009

- The caption for (a)(1) does not capture an essential part of the paragraph; namely the requirement that the appellant state the issues to be presented. We suggest revising the

caption to be "***Appellant's Designation; Statement of Issues***." A parallel suggestion would revise the caption for (a)(2) to be "***Appellee's and Cross-Appellant's Designation; Statement of Issues.***" Or, since both of those concepts are captured in the (a) subheading, simply retain the (1), (2), (3) sub-subheadings of the existing rule.

- In (a)(4), the first bullet point omits "kept by the bankruptcy clerk" and just requires the record to include "the docket entries". This could present confusion in cases in which there are prior relevant appeals or prior relevant cases, in that it is unclear whether the docket entries from those matters should be included. We suggest retaining the current language.

- In (a)(4), the seventh bullet point requires "transcripts of all oral rulings". This may be unintentionally overbroad as there may be many oral rulings that are not relevant to the appeal. We suggest adding "related to the resolution of the issues stated in the party's statement of issues" after "all oral rulings". Or simply retain the language of the existing rule, which is more concise.

- In (a)(4), the tenth bullet point copies the awkward language of the current rule. It refers to the source of the additional items as the record, rather than the bankruptcy court's docket. We suggest rewriting this point as "any other items from the bankruptcy court's docket that the reviewing court orders to be included."

- In (b)(3)(A), "as defined in Rule 8010(a)(1)" is set off from the rest of the text in parentheticals, as opposed to set off with commas in (b)(1)(A) and (b)(2)(A). There is no apparent reason for the inconsistency. Consider also whether it makes sense simply to define "reporter" elsewhere in this rule rather than repeating the same cumbersome cross-reference three times.

- In (d)(2), "may consider" could simply be "considers".

- In (e)(1), there is pronoun ambiguity regarding the concluding "it" (does this reference only the offending item or the record as a whole?). We suggest sticking with "that item" as in the current rule.

Restyled Rule 8010

- In (a)(2)(C), the restyled rule references an "order", which appears to be a reference to a party's request for a transcript, and not any order subject to the notice of appeal. We suggest adding "transcript" before "order".

- In (a)(2)(D), there appears to be a typo – the missing space in "mustnotify".

- In (b)(1), the use of "paragraph (5) below" as opposed to just "(5)" or the like seems at odds with the stylistic changes elsewhere.

- In (b)(5), the rule refers to a "motion for leave to appeal" when tasking a bankruptcy clerk with assembly of the record. Rule 8004(d), however, allows a reviewing court to treat a notice of appeal as a motion for leave to appeal. This might cause confusion for a bankruptcy clerk. A suggestion might be to replace "if a motion for leave to appeal is filed" with "if a party files a motion specifically requesting leave to appeal".

Restyled Rule 8011

- In (a)(2), there is no explicit reference to the ability to file paper documents directly with the court. Subpart (a)(2)(A)(i) purports to be "In General" filing, but only deals with permissive filing by mail; subpart (a)(2)(A)(ii) is permissive filing of briefs and appendices by mail or delivery by commercial carrier; and subpart (a)(2)(A)(iii) deals with inmate filing. Although it perhaps obvious, for the benefit of pro se filers, subpart (a)(2)(A)(i)-(ii) might be redrafted as follows (with the italicized language added):

  (i) In General. For a document not filed electronically, filing may be accomplished by
  - *personal delivery to the clerk of the district court or BAP in accordance with the rules of such court*; or
  - mail addressed to the clerk of the district court or BAP.

  Except as provided in (ii) and (iii), filing is timely only if the clerk receives the document within the time set for filing.

  (ii) Brief or Appendix. A brief or appendix not filed electronically is ~~also~~ timely filed if, on or before the last day for filing, it is:
  - *personally delivered to the clerk of the district court or BAP in accordance with the rules of such court; or*
  - mailed to the clerk by first- class mail—or other class of mail that is at least as expeditious—postage prepaid.

- In (a)(2)(B)(ii), there is reference to "An individual not represented by an attorney" and a limitation of such a person's use of electronic filing. That restriction generally makes sense with most pro se parties, but some parties to the appeal could be attorneys with filing privileges who are not represented by another attorney (appeals from sanction orders would be a key example). We suggest changing the language to "An individual not represented by an attorney who otherwise is not authorized by court order or rule to file matters with the court electronically:".

Restyled Rule 8012

In (a), the wording could be further streamlined by changing "that identifies" to "identifying" and "states" to "stating".

Restyled Rule 8013

- In (b), there appears to be a typo – the missing space in "itwithin".

- In (g)(2), the "(E)" is missing from the final item in (A)-(E).

Restyled Rule 8014

In (a)(3), there is potential pronoun ambiguity regarding the "they are" and the sentence structure is odd here with the apparent referents set off from the pronoun by em dashes. We suggest using "each authority is" here.

Restyled Rule 8015

In (a)(2)(F), there is a reference to "e-mail". The preferred form, as stated by the New York Times Manual of Style, the Associated Press Style Manual, and The Chicago Manual of Style, omits the hyphen. Indeed, restyled Rule 8013(d)(2)(C)(i) uses "email" without the hyphen. We suggest omitting the hyphen.

Restyled Rule 8016

- In (b), there is a run-on word; "whofiles" should be "who files".

- (e)(4) still uses "good cause", but the restyling elsewhere replaces that with just "cause".

Restyled Rule 8017

In (a)(4)(B), there is potential pronoun ambiguity regarding the "they are" and the sentence structure is odd here with the apparent referents set off from the pronoun by em dashes. We suggest using "each authority is" here.

Restyled Rule 8018

- (a)(3) still uses "good cause", but the restyling elsewhere replaces that with just "cause".

- In (b)(2) and (b)(3), the captions refer to a "duty" of a party, when the text of those paragraphs only grant permission. We suggest substituting "Response" for "Duty". Alternatively, these captions could simply be "Appellee's Appendix." and "Cross-Appellee's Appendix.", respectively.

Restyled Rule 8018.1

In the text of the rule, the word "power" is changed to "authority". Although they have similar meanings, we suggest using "power" as that word is keyed to the term of art ("judicial Power of the United States") from which the concept derives. Similarly, "Lacked Authority" should be "Lacked Power" in the title of the rule.

Restyled Rule 8019

- In (b), the restyled rule repeats an awkward locution in the current rule – mixing singular and plural forms in the main sentence and its contained appositive. The sentence could be rewritten to avoid this clash as: "Oral argument must be allowed in every case unless the district judge—or each BAP judge assigned to hear the appeal—examines . . . ."

- In the last sentence of (h), there is potential pronoun ambiguity regarding the first "them", especially since that sentence itself contains no referent noun; we suggest using "the exhibits" as in the current rule.

Restyled Rule 8025

- In (b)(4), the relocated placement of "If a trustee obtains a stay," is odd and could be read as a condition or modifier of the subsequent discussion of a stay obtained by the United States, etc. Consider whether breaking this sentence into two would be clearer and avoid the drafting issues (which exist in both the current rule and the restyled rule).

- In (d), we suggest not changing "any of its judges" to "one of its judges". It may be that some courts of appeals use two- or three-judge motion panels. There is no reason to specify one judge and create issues if a given matter happens to involve more than one judge for whatever reason. The current rule avoids this issue.

Restyled Part IX Generally

Several of the restyled rules (e.g., 9005, 9005.1, 9011(e), 9016, 9017, 9018(a)(2), 9023(a), 9024(a), 9026, 9028, and 9031) generally reference a "bankruptcy case". Since a bankruptcy case is, in a very real sense, simply the aggregation of all bankruptcy proceedings for a particular debtor, and for the avoidance of doubt, consider redrafting these references in each rule as follows: "... in a bankruptcy case or proceeding". This locution is also consistent with restyled Rule 9015(a) & (c).

Restyled Rule 9001

- (b)(2) refers to "Title 11 U.S.C.", whereas restyled Rule 1001(a) refers to the Bankruptcy Code as Title 11 of the United States Code. We suggest picking one of the two and using consistently.

- In (b)(4), we suggest adding the word "bankruptcy" before "case", particularly since restyled Rule 9027(e)(2) uses the word "judge" in the context of removal, where there could otherwise be confusion about whether this is a reference to the judge presiding over the bankruptcy case or the judge presiding in the court from which the claim or cause of action has been removed.

- In (b)(5), in the introductory clause, we suggest deleting the phrase "be compelled to" as unnecessary.

- Also in (b)(5), in the introductory clause, we suggest deleting "any or all of the following" as unnecessary.

Restyled Rule 9002

- In the introductory clause, we suggest replacing the em dashes with commas.

- In (d), it is unclear why "bankruptcy judge" initially appears in quotation marks. This is not necessary to define the relevant terms and seems to suggest a "scare quotes" effect that undoubtedly is not intended.

- In (e), we suggest retaining the locution "any appealable order", as opposed to "an appealable order", consistent with restyled Rule 9001(7).

Restyled Rule 9003

- In the third bullet point of (a), since agent is a broader concept than employee and the relevant agents of a party in interest who should be prohibited from ex parte communications with the court go beyond attorneys and accountants, we suggest inserting "agents," after "accountant," and before "or". This also tracks with the final bullet point referencing "agents" of the US trustee's office.

- In (b), there is potential pronoun ambiguity regarding the "it"; we suggest avoiding this issue and generally streamlining by drafting as "general problems and improvement of bankruptcy administration—including . . .".

- In (b), we suggest replacing the em dash with a comma.

Restyled Rule 9004

- We suggest redrafting the second sentence of (a) to read: "A commonly used abbreviation is acceptable."

- In (b), the initial "To be filed," clause is problematic insofar as it suggests a condition that, if not satisfied, should result in a document being rejected outright by the clerk (rather than docketed/filed despite a technical deficiency in the caption). We suggest changing the initial language to "A filed document must contain . . .".

Restyled Rule 9006

- As a general matter, there are several uses of em dashes in this restyled rule that seem unnecessarily abrupt breaks and would be better served by using commas; e.g., in (b)(1), (b)(3)(A), (b)(3)(B), (c)(1), and (d)(2).

- In (a)(2)(C), changing the word "time" (in the existing rule) to "hour" (in the restyled rule) could create confusion that might also work an unintended substantive change (e.g.,

if "hour" is interpreted to mean any time during the same clock hour of the event triggering the period). We suggest retaining the word "time" instead of "hour", as is done in restyled (a)(3)(B).

- The holiday list in (a)(6)(A) is missing Labor Day.

- In (b)(1)(A), "the request" is ambiguous since there is no previous mention of a request and especially since it immediately follows "with or without a motion or notice". We suggest changing "the request" to "a request to extend".

- It is unclear why the final clauses of (b)(3)(A) and (b)(3)(B) are phrased differently. The corresponding portions of the current rule are phrased in similar fashion and there is no apparent reason for the language to diverge in the restyled rules.

- To restore parallelism between the (b) and (c) subheadings, either the (b) subheading should be renamed "**Extending Time Limits**." or the (c) subheading should be renamed "**Reducing Time.**"

- In (c)(1), we suggest replacing the word "period" in the last clause with the word "time", especially since that is the locution used in the first sentence of (c)(2) to refer to the same thing. And since the phrase "a specified time" has already been used to refer to what is at issue, the last clause of (c)(1) could even be redrafted to simply state "reduce the time."

- The final sentence of (c)(2) is unclear and potentially ambiguous, largely due to the repositioning of "under Rule 1007(c)" as a standalone clause between two commas. The drafting of the current rule is clearer and preferable.

- Since (d) addresses both motions and responses, we suggest changing the (d) subheading to "**Time to Serve Motion Papers.**"

- In (d)(1) and (2), the existing rule refers to a "written motion" and a "written response", which the restyled rule shorten to simply a "motion" and a "response". This could work an unintended substantive change regarding routine oral motions and responses made during a hearing or trial, so we suggest retaining the "written motion" and "written response" language of the existing rule.

- In (d)(1), the last sentence changes the subject of the sentence from an order (in the existing rule) to an application (in the restyled rule) in a confusing manner and omits any reference at all to the court's order. The essential feature of this sentence is authorizing action by the court on an ex parte application (which is only implicit in the restyled rule), so we suggest: "An order changing the period for service may be made on an ex parte application for cause shown."

- In (f), we suggest deleting "Kinds of" from the subheading to reduce the wordiness.

- Also in (f), we suggest deleting the parenthetical explanations after the references to FRCP 5(b)(2)(D) and (F) as unnecessary.

Restyled Rule 9008

- Use of the word "they" is ambiguous, so we suggest replacing it with "these rules".

- We suggest replacing the em dash with a comma.

Restyled Rule 9009

- The prefatory language in (a) is inconsistent in its usage of "official form" and "Official Form" to refer to the official forms generally. This point probably should be checked for uniformity throughout all the restyled rules.

- In the introductory clause of (a), we suggest replacing the em dash with a comma.

Restyled Rule 9010

- The sentence structure of (a)(2) could be interpreted to mean that an individual must act through an authorized agent, attorney-in-fact, or proxy and cannot act personally on one's own behalf. We suggest adding the word "including" before the word "through".

- The wording in (b) could be further streamlined by changing "that contains" to "containing".

- In (c), we suggest retaining the "conforming substantially" language of the existing rule, instead of the "that conforms substantially" language of the restyled rule.

Restyled Rule 9011

- In (a), "amendment to one" is more awkward and less clear than the existing language of "amendment thereto".

- In (b), the phrase "advocating it" is ambiguous and strange (one does not "advocate" some "petitions" or "documents"). We suggest something like "advocating a position set forth therein" instead. Or simply use another word instead of "advocating" that perhaps better captures what the existing rule is after, such as "adopting", "approving", "endorsing", or "ratifying".

- We suggest redrafting (b)(1) as follows: "it is not presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase litigation costs;".

- In each of (b)(2), (b)(3), and (b)(4), we suggest replacing the first word ("the") with "its".

- In (c)(1), "conditions stated below" seems inconsistent with the usage throughout the restyled rules. We suggest changing this to "conditions stated in this rule".

- In (c)(2)(C), we suggest that readability might be improved by breaking up the run-on of two successive nouns, each modified by a preceding adjective, by inserting "any" as follows: "to the prevailing party any reasonable expenses . . .".

Restyled Rule 9012

The last clause of the fifth bullet point of (a) refers to the state where an "oath" is taken, but (a) itself also includes affirmations and acknowledgments. We suggest redrafting as follows: "in the state where administered or taken;".

Restyled Rule 9013

- While it is only implicit in both the existing and restyled rules, an additional exception to the written motion requirement is any request for an order that must be made via complaint in an adversary proceeding. We suggest making this explicit by adding a third enumerated exception (probably best designated as (a)(1)) as follows: "a pleading in an adversary proceeding is authorized or required by these rules".

- In the subheading for (b), we suggest deleting the word "the" as unnecessary and awkward, or changing it to "a". Similarly, we suggest changing the first word of (b) ("The") to "A".

- Also in the first sentence of (b), consider changing the last word ("sought") to "requested", which change would replicate the language used in (a).

Restyled Rule 9014

- The second sentence of (c)(1) refers to a "matter" rather than a "contested matter". To avoid any confusion, we suggest use of the latter language.

- In each of the bulleted items in (c)(2), we suggest deleting as unnecessary the descriptive text after the specified subdivision of FRCP 26. In addition, those deletions would likely warrant collapsing the bulleted items into nonbulleted text as follows: "(a)(1)-(3) and (f)." Alternatively, (c)(2) could be redrafted as follows: "Unless the court orders otherwise, subdivisions (a)(1)-(3) and (f) of Fed. R. Civ. P. 26, as incorporated by Rule 7026, do not apply in a contested matter."

Restated Rule 9015

- In (b), (b)(1) and (b)(3) merely replicate (unnecessarily) explicit requirements of 28 U.S.C. § 157(e) and, therefore, can be deleted without making any substantive change. Moreover, (b)(2) is redundant with (a), which states that FRCP 38 (as modified by Rule 5005) also applies. The only substantive content added by the existing rule is to clarify

(given that the statute requires the express consent of all parties) that the parties can file their express consents jointly or separately. That is entirely lost in the reframing of the restyled rule. We suggest retaining the language of the existing rule, beginning with the phrase "the parties"; i.e., delete all of the existing rule before the phrase "the parties", but retain all of the remaining language of the existing rule.

- In (c), we suggest replacing the em dash with a comma.

Restyled Rule 9019

- In (a), the first bullet item lists "the creditors". "All creditors" notices pursuant to Rule 2002(a) (language that is retained in the proposed restyled Rule 2002(a)) may well be a "sacred phrase" that should be replicated here.

- Also in (a), the fourth bullet item lists "indenture trustees as provided in Rule 2002." Proposed restyled Rule 2002(a) uses the "all indenture trustees" language, which perhaps should also be replicated here.

- In the subheading for (b), the "Controversies in Classes" reference is awkward and confusing. We suggest replacing it with "Classes of Controversies".

- In (c), we suggest retaining the simple "**Arbitration.**" subheading. If a controversy does not affect the estate, the bankruptcy court has no jurisdiction over the controversy in any event (at least under the prevailing *Pacor* test), so addition of that language adds little if any descriptive value.

Restyled Rule 9022

The final sentence of (b) is incomplete and question begging (send a copy of what?). We suggest adding "of the judgment or order" after "copy".

Restyled Rule 9024

- In (a), we suggest replacing the em dash with a comma.

- In (a)(1), although "allow" and "disallow" are bankruptcy terms of art referring to claims against the estate, the term claim is generally understood in civil jurisdiction and procedure to have a much broader meaning. Indeed, the term "claim" as defined in the Bankruptcy Code is not restricted to claims against the debtor or estate (only the definition of creditor is so restricted). To avoid confusion, therefore, we suggest retaining the "claim against the estate" language of the existing rule.

Restyled Rule 9027

- In (a)(1) and (a)(2)(C), we suggest deleting the em dashes.

- To make the (b) subheading more concise, consider substituting "Nonbankruptcy Court" for "Court from Which the Claim Was Removed".

- In the (d) subheading, we suggest deleting "After Removal" as unnecessary; remand is a well-understood concept in the removal context and needs no further explanatory description.

- In the last sentence of (e)(1), the "they" is ambiguous (is it referencing any necessary orders and process, parties, or something else?). We suggest eliminating the pronoun and specifying the intended noun.

- In (e)(2), "in a removed claim" is awkward and confusing. We suggest replacing "in" with "for".

- In (e)(3)(A), consistent with the phrasing in other portions of the restyled rules (e.g., Rule 9027(a)(1)(B)), we suggest redrafting as follows: ". . . consent to the bankruptcy court's entry of a final judgment or order;".

- In (e)(3)(B), consistent with the phrasing in other portion of the restyled rules, we suggest redrafting as follows: "sign the statement under Rule 9011;".

- In (e)(3)(C), the "it" is ambiguous, particularly if one reads directly to that clause off the prefatory language. We suggest using "the statement" instead, as in (e)(3)(B).

- In (e)(3)(D), we suggest adding "the statement" after "a copy".

- In (f), "has been proved defective" is awkward. We suggest substituting "was defective".

- Also in (f), and consistent with the style used throughout the restyled rules, we suggest redrafting the last clause of the first sentence as follows: ". . . issued under the Part VII rules."

- Also in (f), in the we suggest deleting everything after "may move to remand" as unnecessary, and perhaps also substituting "under (d)".

- In (g)(2), we suggest deleting the em dash.
- In (g)(2)(A) and in (h), we suggest replacing the em dashes with commas.

- In (i)(1), we suggest deleting "been held" as unnecessary.

Restyled Rule 9029

- In (a)(1)(A), the change of "Acts of Congress" to "federal statutes" is potentially substantive. Some acts, such as BAPCPA, contain uncodified provisions that are part of the act but ***not*** part of any federal statute, which means the restyled language potentially narrows the reach of this rule.

- In (a)(1)(A), we suggest replacing the em dashes with commas.

- In (a)(2), "do the same" is ambiguous. We suggest replacing "do the same" with "make and amend local bankruptcy rules."

- In (c), we suggest deleting the first word of the second sentence ("But") as unnecessary.

- Also in the second sentence of (c), to enhance readability and comprehensibility, we suggest redrafting as follows: "For any requirement not contained in any of the foregoing, a sanction . . .".

- Also in the second sentence of (c), we suggest inserting "or proceeding" after "case".

Restyled Rule 9030

We believe there is utility in retaining "Unaffected" in the rule title, consistent with the more descriptive titles used throughout the restyled rules.

Restyled Rule 9031

We suggest deleting "Using" from the rule title, as it does not appreciably enhance the descriptive value of the title.

Restyled Rule 9033

- In the (b) subheading, we suggest deleting "; Time to File" as unnecessary, since "Time to File" is the immediately succeeding sub-subheading of (b)(1). If that deletion is made, "to File" could be added to the (b)(3) sub-subheading.

- In (b)(1), to enhance readability and comprehensibility and eliminate ambiguity in the first sentence as to what is being objected to, we suggest combining the first two sentences of the proposed restyled rule as follows: ". . . may file and serve objections, which must identify . . .".

- In (a)(2), the use of "agree to" is grammatically improper. We suggest replacing "to" with "are" and inserting commas after "are" and "considers".

- At the end of the first sentence of (b)(3), we suggest deleting the last word ("expires") as unnecessary.

- Similarly, in the second sentence of (b)(3), the word "expires" could be deleted as unnecessary.

- The last sentence of (b)(3) starts with "But", but that sentence does not actually provide a contrast with or departure from anything that preceded it. The sentence could instead simply start with "A request" or perhaps something like "Additionally," or "Also,".

- In (c)(2), the "them" creates ambiguity and potentially alters the meaning of the current rule. The current rule contemplates that the district judge will act regarding "the proposed findings of fact or conclusions of law" ***as an entirety***, but the restyled language could be read to limit the available acts to only those findings and conclusions subject to specific written objection (i.e., by reading the "them" to refer back to what is described in (c)(1)). We suggest avoiding this potential narrowing of the rule by eliminating the pronoun and tracking the current language.

Restyled Rule 9034

- In (f), addition of "the" before "authority to obtain credit" is awkward and we suggest deletion.

- In (k), consistent with the usage throughout the restyled rules, we suggest replacing "papers" with "documents".

Restyled Rule 9035

Since the title has been changed to refer to a singular judicial district, the conjunction between Alabama and North Carolina should also be changed to "or".

Restyled Rule 9037

- In (a), consider deleting "with the court" after "filing" as unnecessary.

- In (c), consider changing the subheading to "Order to File Under Seal."

- We suggest redrafting (d) as follows:

  (d) Protective Orders. For cause, the court may:

  (1) order redaction of additional information; or

  (2) limit or prohibit a nonparty's remote electronic access to a filed document.

- In (h)(1)(B), the "it" is ambiguous, particularly if one reads directly to that clause off the prefatory language. We suggest using "the motion" instead, as in the current rule.

- In (h)(1)(D), the semicolon before the bullets should be a colon.

- In the fifth bulleted item of (h)(1)(D), we suggest using the more inclusive "entity" designation (as defined in the Bankruptcy Code) instead of "person".

* * *

We hope these comments are helpful during the process of finalizing revisions to the Federal Rules of Bankruptcy Procedure. Please contact us if the NBC's Courts Committee can be of further assistance.

Sincerely,

Whitman L. Holt
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Encl.

National Bankruptcy Conference

A non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and any proposed changes to those laws.

History. The National Bankruptcy Conference (NBC) was formed from a nucleus of the nation's leading bankruptcy scholars and practitioners, who gathered informally in the 1930's at the request of Congress to assist in the drafting of major Depression-era bankruptcy law amendments, ultimately resulting in the Chandler Act of 1938. The NBC was formalized in the 1940's and has been a resource to Congress on every significant piece of bankruptcy legislation since that time. Members of the NBC formed the core of the Commission on the Bankruptcy Laws of the United States, which in 1973 proposed the overhaul of our bankruptcy laws that led to enactment of the Bankruptcy Code in 1978, and were heavily involved in the work of the National Bankruptcy Review Commission (NBRC), whose 1997 report initiated the process that led to significant amendments to the Bankruptcy Code in 2005. Most recently, the Conference played a leading role in developing the Small Business Reorganization Act of 2019, Pub. L. 116-54.

Current Members. Membership in the NBC is by invitation only. Among the NBC's 60 active members are leading bankruptcy scholars at major law schools, as well as current and former judges from eleven different judicial districts and practitioners from leading law firms throughout the country who have been involved in most of the major corporate reorganization cases of the last three decades. The NBC includes leading consumer bankruptcy experts and experts on commercial, employment, pension, mass tort, and tax-related bankruptcy issues. It also includes former members of the congressional staff who participated in drafting the Bankruptcy Code as originally passed in 1978 and former members and staff of the NBRC. The current members of the NBC and their affiliations are set forth on the second page of this fact sheet.

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