

**VBA BANKRUPTCY LAW SECTION**  
**BENCH-BAR BROWN BAG LUNCH MEETING**  
*with Hon. Colleen A. Brown, U.S. Bankruptcy Judge*

**United States Bankruptcy Court, Burlington**  
**Tuesday, February 19, 2019 ~ 12:00 - 1:00 PM**  
**Dial-in number: (888) 398-2342. Access code: 846 68 72#**  
***If you dial into the meeting, please use your “mute” function, unless speaking.***

**AGENDA**

1. AMENDMENTS TO FEDERAL BK'CY RULES-EFF. 12/1/18 JUDGE BROWN
  - clean and redlined versions *attached (both are also on VTB website)*
2. REQUIREMENT FOR MONTHLY STMTS FOR HELOC MTGES JEFF HARDIMAN
  - Ct has discretion to determine whether to require mtgees holding HELOC  
Notes to file monthly statements; Ct seeking input on best procedure for VT
  - See Vt. LBR 3071-1(d), Fed Rule 3002.1(b), In Re Pillow, 2013 Bk LEXIS 5711 (*attached*)
3. TASK FORCE(S) NEEDED TO STUDY AND MAKE PROPOSALS JUDGE BROWN
  - May need a procedure & forms for extending the stay under 362(c)
  - May need a procedure for dealing w/ stmts for HELOC mtges
  - Need to revise LRs re Pro Se use of ECF per new Fed Bk'cy Rules eff 12/1/18
4. OBJECTIONS TO MTGE PAYMENT CHANGES IN CMP CASES JUDGE BROWN & JAN SENSENICH
  - Seeking input re T's duty upon D's obj to Mtge Pmt Change
    - Shd T keep making pmts? hold \$ until obj decided? pay the new amount?
5. PROC. FOR PROVIDING FINAL FIGURE FOR CLOSING COST IN PROPOSED ORDERS JUDGE BROWN / REBECCA RICE
6. CM/ECF TRAINING FOR ATTORNEYS THERESA DAVIDSON
  - Clerk's Office staff will offer training to attorneys & their staffs at either the courthouse or the attorneys' offices; can be first time or refresher
7. POST-PETITION ATTYS FEES IN CH 7 CASES JUDGE BROWN
  - When and how does attorney need to apply for them?
8. CLERK'S OFFICE UPDATE JEFF EATON
  - Construction Update
9. BK'CY CLE AT VBA MIDYEAR MEETING - MARCH 22, 2019 DON HAYES / NANCY GEISE
  - Focus on Student Loans / Intersection of Bk'cy & Higher Ed Law
  - Additional Topic: Status of Federal Employee Pro Bono Project MICHELLE KAINEN
10. PROPOSED TOPICS OR MODIFICATIONS TO STRUCTURE OF 2019 BBS EVERYONE
  - Open discussion re current format of BB meetings / agenda formulation process.

**Attachments:** redline & clean versions of Amended Fed Bk Rules, Vt VLB 3071-1(d), Pillow case

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court. 1 CLE credit provided per meeting.  
Contact Maria Dionne @ 802-657-6432 or [maria\\_dionne@vtb.uscourts.gov](mailto:maria_dionne@vtb.uscourts.gov) with any questions.

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

**EFFECTIVE 12.1.18**

**Rule 3002.1 Notice Relating to Claims Secured by  
Security Interest in the Debtor's Principal  
Residence**

\* \* \* \* \*

(b) NOTICE OF PAYMENT CHANGES;  
OBJECTION.

(1) *Notice.* The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest-rate or escrow-account adjustment, no later than 21 days before a payment in the new amount is due. If the claim arises from a home-equity line of credit, this requirement may be modified by court order.

(2) *Objection.* A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments in

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

accordance with § 1322(b)(5) of the Code. If no motion is filed by the day before the new amount is due, the change goes into effect, unless the court orders otherwise.

\* \* \* \* \*

(e) DETERMINATION OF FEES, EXPENSES, OR CHARGES. On motion of a party in interest filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

\* \* \* \* \*

**Rule 5005. Filing and Transmittal of Papers**

(a) FILING.

\* \* \* \* \*

(2) *Electronic Filing and Signing.*

(A) *By a Represented Entity—Generally Required; Exceptions.* 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.

(B) *By an Unrepresented Individual—When Allowed or Required.* An individual not represented by an attorney:

(i) may file electronically only if allowed by court order or by local rule; and

(ii) may be required to file electronically only by court order, or by a

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

local rule that includes reasonable exceptions.

(C) *Signing.* 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.

(D) *Same as a Written Paper.* 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.

\* \* \* \* \*

**Rule 7004. Process; Service of Summons,  
Complaint**

(a) SUMMONS; SERVICE; PROOF OF SERVICE.

(1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1), (d)(5), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

\* \* \* \* \*

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

**Rule 7062. Stay of Proceedings to Enforce a Judgment**

Rule 62 F.R.Civ.P. applies in adversary proceedings, except that proceedings to enforce a judgment are stayed for 14 days after its entry.

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

(a) IN GENERAL.

\* \* \* \* \*

(5) *Entry Defined.*

(A) A judgment, order, or decree is entered for purposes of this Rule 8002(a):

(i) when it is entered in the docket under Rule 5003(a), or

(ii) if Rule 7058 applies and Rule 58(a) F.R.Civ.P. requires a separate document, when the judgment, order, or decree is entered in the docket under Rule 5003(a) and when the earlier of these events occurs:

- the judgment, order, or decree is set out in a separate document; or

8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

- 150 days have run from entry of the judgment, order, or decree in the docket under Rule 5003(a).

(B) A failure to set out a judgment, order, or decree in a separate document when required by Rule 58(a) F.R.Civ.P. does not affect the validity of an appeal from that judgment, order, or decree.

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

(1) *In General.* If a party files in the bankruptcy court any of the following motions and does so within the time allowed by these rules, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

\* \* \* \* \*

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

(1) *In General.* If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8002(c)(1). If an inmate files a notice of appeal from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

10 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 8002(c)(1)(A)(i).

\* \* \* \* \*

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

\* \* \* \* \*

(c) JOINT CERTIFICATION BY ALL APPELLANTS AND APPELLEES.

(1) *How Accomplished.* A joint certification by all the appellants and appellees under 28 U.S.C. § 158(d)(2)(A) must be made by using the appropriate Official Form. The parties may supplement the certification with a short statement of the basis for the certification, which may include the information listed in subdivision (f)(2).

(2) *Supplemental Statement by the Court.* Within 14 days after the parties' certification, the bankruptcy court or the court in which the matter is then pending may file a short supplemental statement about the merits of the certification.

\* \* \* \* \*

12 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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

(a) INITIAL MOTION IN THE BANKRUPTCY COURT.

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

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

(B) the approval of a bond or other security provided to obtain a stay of judgment;

\* \* \* \* \*

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

(d) BOND OR OTHER SECURITY FOR A TRUSTEE OR THE UNITED STATES. The court may require a trustee to file a bond or other security when the trustee appeals. A bond or other security is not required

when an appeal is taken by the United States, its officer, or its agency or by direction of any department of the federal government.

\* \* \* \* \*

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

\* \* \* \* \*

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

- leave to appeal;
- dismissal;
- a stay pending appeal;
- approval of a bond or other security provided to obtain a stay of judgment; or
- any other intermediate order.

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

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

(a) FILING.

\* \* \* \* \*

(2) *Method and Timeliness.*

(A) *Nonelectronic Filing.*

(i) *In General.* For a document not filed electronically, filing may be accomplished by mail addressed to the clerk of the district court or BAP. Except as provided in subdivision (a)(2)(A)(ii) and (iii), filing is timely only if the clerk receives the document within the time fixed 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:

16 FEDERAL RULES OF BANKRUPTCY PROCEDURE

- mailed to the clerk by first-class mail—or other class of mail that is at least as expeditious—postage prepaid; or

- dispatched to a third-party commercial carrier for delivery within 3 days to the clerk.

(iii) *Inmate Filing.* If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8011(a)(2)(A)(iii). A document not filed electronically by an inmate confined in an institution is timely if it is deposited in the institution's internal mailing system on or before the last day for filing and:

- it is accompanied by a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

- the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies this Rule 8011(a)(2)(A)(iii).

(B) *Electronic Filing.*

(i) *By a Represented Person—Generally Required; Exceptions.* An entity

18 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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.

(ii) *By an Unrepresented Individual—When Allowed or Required.* An individual not represented by an attorney:

- may file electronically only if allowed by court order or by local rule; and
- may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.

(iii) *Same as a Written Paper.* A document filed electronically is a written paper for purposes of these rules.

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

\* \* \* \* \*

(c) MANNER OF SERVICE.

(1) *Nonelectronic Service.* Nonelectronic service may be by any of the following:

(A) personal delivery;

(B) mail; or

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

(2) *Electronic Service.* Electronic service may be made by sending a document to a registered user by

20 FEDERAL RULES OF BANKRUPTCY PROCEDURE

filing it with the court's electronic-filing system or by using other electronic means that the person served consented to in writing.

(3) *When Service Is Complete.* Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier.

(d) PROOF OF SERVICE.

(1) *What Is Required.* A document presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

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

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

- (i) the date and manner of service;
- (ii) the names of the persons served;

and

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

\* \* \* \* \*

(e) SIGNATURE. Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the electronic signature of counsel. 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,

22 FEDERAL RULES OF BANKRUPTCY PROCEDURE

constitutes the person's signature. Every document filed in paper form must be signed by the person filing the document or, if the person is represented, by counsel.

**Rule 8013. Motions; Intervention**

\* \* \* \* \*

(f) FORM OF DOCUMENTS; LENGTH LIMITS;  
NUMBER OF COPIES.

\* \* \* \* \*

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

(3) *Length Limits.* Except by the district court's or BAP's permission, and excluding the accompanying documents authorized by subdivision (a)(2)(C):

(A) a motion or a response to a motion produced using a computer must include a

24 FEDERAL RULES OF BANKRUPTCY PROCEDURE

certificate under Rule 8015(h) and not exceed 5,200 words;

(B) a handwritten or typewritten motion or a response to a motion must not exceed 20 pages;

(C) a reply produced using a computer must include a certificate under Rule 8015(h) and not exceed 2,600 words; and

(D) a handwritten or typewritten reply must not exceed 10 pages.

\* \* \* \* \*

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

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

\* \* \* \* \*

(7) *Length.*

(A) *Page Limitation.* A principal brief must not exceed 30 pages, or a reply brief 15 pages, unless it complies with subparagraph (B).

(B) *Type-volume Limitation.*

(i) A principal brief is acceptable if it contains a certificate under Rule 8015(h) and:

- contains no more than 13,000 words; or
- uses a monospaced face and contains no more than 1,300 lines of text.

26 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(ii) A reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half of the type volume specified in item (i).

\* \* \* \* \*

(f) LOCAL VARIATION. A district court or BAP must accept documents that comply with the form requirements of this rule and the length limits set by Part VIII of these rules. By local rule or order in a particular case, a district court or BAP may accept documents that do not meet all the form requirements of this rule or the length limits set by Part VIII of these rules.

(g) ITEMS EXCLUDED FROM LENGTH. In computing any length limit, headings, footnotes, and quotations count toward the limit, but the following items do not:

- the cover page;

- a corporate disclosure statement;
- a table of contents;
- a table of citations;
- a statement regarding oral argument;
- an addendum containing statutes, rules, or regulations;
- certificates of counsel;
- the signature block;
- the proof of service; and
- any item specifically excluded by these rules or by local rule.

(h) CERTIFICATE OF COMPLIANCE.

(1) *Briefs and Documents That Require a Certificate.* A brief submitted under Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)—and a document submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1)—must include a

certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The individual preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

(2) *Acceptable Form.* The certificate requirement is satisfied by a certificate of compliance that conforms substantially to the appropriate Official Form.

**Rule 8016. Cross-Appeals**

\* \* \* \* \*

(d) LENGTH.

(1) *Page Limitation.* Unless it complies with paragraph (2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) *Type-volume Limitation.*

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if it includes a certificate under Rule 8015(h) and:

(i) contains no more than 13,000 words; or

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

30 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(B) The appellee's principal and response brief is acceptable if it includes a certificate under Rule 8015(h) and:

(i) contains no more than 15,300 words; or

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

(C) The appellee's reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half of the type volume specified in subparagraph (A).

\* \* \* \* \*

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

(a) DURING INITIAL CONSIDERATION OF A  
CASE ON THE MERITS.

(1) *Applicability.* This Rule 8017(a) governs amicus filings during a court's initial consideration of a case on the merits.

(2) *When Permitted.* The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a district court or BAP may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification. On its own motion, and with notice to all parties to an appeal, the district court or BAP may request a brief by an amicus curiae.

32 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(3) *Motion for Leave to File.* The motion must be accompanied by the proposed brief and state:

(A) the movant's interest; and

(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal.

(4) *Contents and Form.* An amicus brief must comply with Rule 8015. In addition to the requirements of Rule 8015, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 8012. An amicus brief need not comply with Rule 8014, but must include the following:

(A) a table of contents, with page references;

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

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

(D) unless the amicus curiae is one listed in the first sentence of subdivision (a)(2), a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person—other than the amicus curiae, its members, or its counsel—

34 FEDERAL RULES OF BANKRUPTCY PROCEDURE

contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

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

(F) a certificate of compliance, if required by Rule 8015(h).

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

(6) *Time for Filing.* An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief

of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's principal brief is filed. The district court or BAP may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) *Reply Brief.* Except by the district court's or BAP's permission, an amicus curiae may not file a reply brief.

(8) *Oral Argument.* An amicus curiae may participate in oral argument only with the district court's or BAP's permission.

(b) DURING CONSIDERATION OF WHETHER  
TO GRANT REHEARING.

(1) *Applicability.* This Rule 8017(b) governs amicus filings during a district court's or BAP's

consideration of whether to grant rehearing, unless a local rule or order in a case provides otherwise.

(2) *When Permitted.* The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.

(3) *Motion for Leave to File.* Rule 8017(a)(3) applies to a motion for leave.

(4) *Contents, Form, and Length.* Rule 8017(a)(4) applies to the amicus brief. The brief must include a certificate under Rule 8015(h) and not exceed 2,600 words.

(5) *Time for Filing.* An amicus curiae supporting the motion for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days

after the motion is filed. An amicus curiae opposing the motion for rehearing must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

**Rule 8018.1. District-Court Review of a Judgment that the Bankruptcy Court Lacked the Constitutional Authority to Enter**

If, on appeal, a district court determines that the bankruptcy court did not have the power under Article III of the Constitution to enter the judgment, order, or decree appealed from, the district court may treat it as proposed findings of fact and conclusions of law.

**Rule 8021. Costs**

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

- (1) the production of any required copies of a brief, appendix, exhibit, or the record;
- (2) the preparation and transmission of the record;
- (3) the reporter's transcript, if needed to determine the appeal;
- (4) premiums paid for a bond or other security to preserve rights pending appeal; and
- (5) the fee for filing the notice of appeal.

\* \* \* \* \*

**Rule 8022. Motion for Rehearing**

\* \* \* \* \*

(b) FORM OF THE MOTION; LENGTH. The motion must comply in form with Rule 8013(f)(1) and (2). Copies must be served and filed as provided by Rule 8011. Except by the district court's or BAP's permission:

(1) a motion for rehearing produced using a computer must include a certificate under Rule 8015(h) and not exceed 3,900 words; and

(2) a handwritten or typewritten motion must not exceed 15 pages.

**Rule 9025. Security: Proceedings Against Security Providers**

Whenever the Code or these rules require or permit a party to give security, and security is given with one or more security providers, each provider submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.

**Appendix:**  
**Length Limits Stated in Part VIII of the**  
**Federal Rules of Bankruptcy Procedure**

This chart shows the length limits stated in Part VIII of the Federal Rules of Bankruptcy Procedure. Please bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 8015(g).
- If you are using a word limit or line limit (other than the word limit in Rule 8014(f)), you must include the certificate required by Rule 8015(h).
- If you are using a line limit, your document must be in monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.
- For the limits in Rules 8013 and 8022:
  - You must use the word limit if you produce your document on a computer; and
  - You must use the page limit if you handwrite your document or type it on a typewriter.

	<b>Rule</b>	<b>Document Type</b>	<b>Word Limit</b>	<b>Page Limit</b>	<b>Line Limit</b>
<b>Motions</b>	8013(f)(3)	• Motion • Response to a motion	5,200	20	Not applicable
	8013(f)(3)	• Reply to a response to a motion	2,600	10	Not applicable
<b>Parties' briefs (where no cross-appeal)</b>	8015(a)(7)	• Principal brief	13,000	30	1,300
	8015(a)(7)	• Reply brief	6,500	15	650

	<b>Rule</b>	<b>Document Type</b>	<b>Word Limit</b>	<b>Page Limit</b>	<b>Line Limit</b>
<b>Parties' briefs (where cross-appeal)</b>	8016(d)	<ul style="list-style-type: none"> <li>• Appellant's principal brief</li> <li>• Appellant's response and reply brief</li> </ul>	13,000	30	1,300
	8016(d)	• Appellee's principal and response brief	15,300	35	1,500
	8016(d)	• Appellee's reply brief	6,500	15	650
<b>Party's supplemental letter</b>	8014(f)	• Letter citing supplemental authorities	350	Not applicable	Not applicable
<b>Amicus briefs</b>	8017(a)(5)	• Amicus brief during initial consideration of case on merits	One-half the length set by the Part VIII Rules for a party's principal brief	One-half the length set by the Part VIII Rules for a party's principal brief	One-half the length set by the Part VIII Rules for a party's principal brief
	8017(b)(4)	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
<b>Motion for rehearing</b>	8022(b)	• Motion for rehearing	3,900	15	Not applicable

**AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>**

1 **Rule 3002.1 Notice Relating to Claims Secured by**  
2 **Security Interest in the Debtor's Principal**  
3 **Residence**

4 \* \* \* \* \*

5 (b) NOTICE OF PAYMENT CHANGES;  
6 OBJECTION.

7 (1) Notice. The holder of the claim shall file and  
8 serve on the debtor, debtor's counsel, and the trustee a  
9 notice of any change in the payment amount, including  
10 any change that results from an interest-rate or escrow-  
11 account adjustment, no later than 21 days before a  
12 payment in the new amount is due. If the claim arises  
13 from a home-equity line of credit, this requirement may  
14 be modified by court order.

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<sup>1</sup> New material is underlined; matter to be omitted is lined through.



**Committee Note**

Subdivision (b) is subdivided and amended in two respects. First, it is amended in what is now subdivision (b)(1) to authorize courts to modify its requirements for claims arising from home equity lines of credit (HELOCs). Because payments on HELOCs may adjust frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping the person who is maintaining payments on the loan apprised of the current payment amount. Courts may specify alternative requirements for providing notice of changes in HELOC payment amounts by local rules or orders in individual cases.

Second, what is now subdivision (b)(2) is amended to acknowledge the right of the trustee, debtor, or other party in interest, such as the United States trustee, to object to a change in a home-mortgage payment amount after receiving notice of the change under subdivision (b)(1). The amended rule does not set a deadline for filing a motion for a determination of the validity of the payment change, but it provides as a general matter—subject to a contrary court order—that if no motion has been filed on or before the day before the change is to take effect, the announced change goes into effect. If there is a later motion and a determination that the payment change was not required to maintain payments under § 1322(b)(5), appropriate adjustments will have to be made to reflect any overpayments. If, however, a motion is made during the time specified in subdivision (b)(2), leading to a suspension of the payment change, a determination that the payment change was valid will require

#### 4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

the debtor to cure the resulting default in order to be current on the mortgage at the end of the bankruptcy case.

Subdivision (e) is amended to allow parties in interest in addition to the debtor or trustee, such as the United States trustee, to seek a determination regarding the validity of any claimed fee, expense, or charge.

1 **Rule 5005. Filing and Transmittal of Papers**

2 (a) FILING.

3 \* \* \* \* \*

4 (2) Electronic Filing and Signing~~by Electronic~~  
5 *Means.*

6 (A) By a Represented Entity—Generally  
7 Required; Exceptions.~~A court may by local rule~~  
8 ~~permit or require documents to be filed, signed, or~~  
9 ~~verified by electronic means that are consistent~~  
10 ~~with technical standards, if any, that the Judicial~~  
11 ~~Conference of the United States establishes. A~~  
12 ~~local rule may require filing by electronic means~~  
13 ~~only if reasonable exceptions are allowed. An~~  
14 entity represented by an attorney shall file  
15 electronically, unless nonelectronic filing is  
16 allowed by the court for good cause or is allowed  
17 or required by local rule.

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

18 (B) By an Unrepresented Individual—  
19 When Allowed or Required. An individual not  
20 represented by an attorney:

21 (i) may file electronically only if  
22 allowed by court order or by local rule; and

23 (ii) may be required to file  
24 electronically only by court order, or by a  
25 local rule that includes reasonable  
26 exceptions.

27 (C) Signing. A filing made through a  
28 person's electronic-filing account and authorized  
29 by that person, together with that person's name  
30 on a signature block, constitutes the person's  
31 signature.

32 (D) Same as a Written Paper. A paper  
33 document filed electronically by electronic means  
34 in compliance with a local rule constitutes is a

35 written paper for the purposes of applying these  
36 rules, the Federal Rules of Civil Procedure made  
37 applicable by these rules, and § 107 of the Code.

38 \* \* \* \* \*

#### **Committee Note**

Electronic filing has matured. Most districts have adopted local rules that require electronic filing and allow reasonable exceptions as required by the former rule. The time has come to seize the advantages of electronic filing by making it mandatory in all districts, except for filings made by an individual not represented by an attorney. But exceptions continue to be available. Paper filing must be allowed for good cause. And a local rule may allow or require paper filing for other reasons.

Filings by an individual not represented by an attorney are treated separately. It is not yet possible to rely on an assumption that pro se litigants are generally able to seize the advantages of electronic filing. Encounters with the court's system may prove overwhelming to some. Attempts to work within the system may generate substantial burdens on a pro se party, on other parties, and on the court. Rather than mandate electronic filing, filing by pro se litigants is left for governing by local rules or court order. Efficiently handled electronic filing works to the advantage of all parties and the court. Many courts now allow electronic filing by pro se litigants with the court's permission. Such approaches may expand with growing experience in these and other courts, along with the growing availability of the systems

## 8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

required for electronic filing and the increasing familiarity of most people with electronic communication. Room is also left for a court to require electronic filing by a pro se litigant by court order or by local rule. Care should be taken to ensure that an order to file electronically does not impede access to the court, and reasonable exceptions must be included in a local rule that requires electronic filing by a pro se litigant.

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. A person's electronic-filing account means an account established by the court for use of the court's electronic-filing system, which account the person accesses with the user name and password (or other credentials) issued to that person by the court.

1 **Rule 7004. Process; Service of Summons,**  
2 **Complaint**

3 (a) SUMMONS; SERVICE; PROOF OF SERVICE.  
4 (1) Except as provided in Rule 7004(a)(2), Rule  
5 4(a), (b), (c)(1), (d)~~(4)~~(5), (e)–(j), (l), and (m)  
6 F.R.Civ.P. applies in adversary proceedings. Personal  
7 service under Rule 4(e)–(j) F.R.Civ.P. may be made by  
8 any person at least 18 years of age who is not a party,  
9 and the summons may be delivered by the clerk to any  
10 such person.

11 \* \* \* \* \*

**Committee Note**

In 1996, Rule 7004(a) was amended to incorporate by reference F.R.Civ.P. 4(d)(1). Civil Rule 4(d)(1) addresses the effect of a defendant’s waiver of service. In 2007, Civil Rule 4 was amended, and the language of old Civil Rule 4(d)(1) was modified and renumbered as Civil Rule 4(d)(5). Accordingly, Rule 7004(a) is amended to update the cross-reference to Civil Rule 4.

1 **Rule 7062. Stay of Proceedings to Enforce a Judgment**

2 Rule 62 F.R.Civ.P. applies in adversary proceedings,

3 except that proceedings to enforce a judgment are stayed for

4 14 days after its entry.

**Committee Note**

The rule is amended to retain a 14-day period for the automatic stay of a judgment. F.R.Civ.P. 62(a) now provides for a 30-day stay to accommodate the 28-day time periods under the Federal Rules of Civil Procedure for filing post-judgment motions and the 30-day period for filing a notice of appeal. Under the Bankruptcy Rules, however, those periods are limited to 14 days. *See* Rules 7052, 8002, 9015, and 9023.

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

2 (a) IN GENERAL.

3 \* \* \* \* \*

4 (5) Entry Defined.

5 (A) A judgment, order, or decree is entered  
6 for purposes of this Rule 8002(a):

7 (i) when it is entered in the docket  
8 under Rule 5003(a), or

9 (ii) if Rule 7058 applies and  
10 Rule 58(a) F.R.Civ.P. requires a separate  
11 document, when the judgment, order, or  
12 decree is entered in the docket under  
13 Rule 5003(a) and when the earlier of these  
14 events occurs:

- 15 • the judgment, order, or  
16 decree is set out in a separate  
17 document; or

12 FEDERAL RULES OF BANKRUPTCY PROCEDURE

18 • 150 days have run from  
19 entry of the judgment, order, or  
20 decree in the docket under  
21 Rule 5003(a).

22 (B) A failure to set out a judgment, order,  
23 or decree in a separate document when required  
24 by Rule 58(a) F.R.Civ.P. does not affect the  
25 validity of an appeal from that judgment, order, or  
26 decree.

27 (b) EFFECT OF A MOTION ON THE TIME TO  
28 APPEAL.

29 (1) *In General.* If a party ~~timely~~ files in the  
30 bankruptcy court any of the following motions and  
31 does so within the time allowed by these rules, the time  
32 to file an appeal runs for all parties from the entry of  
33 the order disposing of the last such remaining motion:

34 \* \* \* \* \*

35 (c) APPEAL BY AN INMATE CONFINED IN AN  
36 INSTITUTION.

37 (1) *In General.* If an institution has a system  
38 designed for legal mail, an inmate confined there must  
39 use that system to receive the benefit of this  
40 Rule 8002(c)(1). If an inmate ~~confined in an institution~~  
41 files a notice of appeal from a judgment, order, or  
42 decree of a bankruptcy court, the notice is timely if it is  
43 deposited in the institution's internal mail system on or  
44 before the last day for filing. ~~If the institution has a~~  
45 ~~system designed for legal mail, the inmate must use that~~  
46 ~~system to receive the benefit of this rule. Timely filing~~  
47 ~~may be shown by a declaration in compliance with 28~~  
48 ~~U.S.C. § 1746 or by a notarized statement, either of~~  
49 ~~which must set forth the date of deposit and state that~~  
50 ~~first-class postage has been prepaid. and:~~

51 (A) it is accompanied by:

52                           (i) a declaration in compliance  
53                           with 28 U.S.C. § 1746—or a  
54                           notarized statement—setting out the  
55                           date of deposit and stating that first-  
56                           class postage is being prepaid; or  
57                           (ii) evidence (such as a  
58                           postmark or date stamp) showing  
59                           that the notice was so deposited and  
60                           that postage was prepaid; or  
61                           (B) the appellate court exercises its  
62                           discretion to permit the later filing of a declaration  
63                           or notarized statement that satisfies Rule  
64                           8002(c)(1)(A)(i).

65                           \* \* \* \* \*

**Committee Note**

Clarifying amendments are made to subdivisions (a), (b), and (c) of the rule. They are modeled on parallel provisions of F.R.App.P. 4.

Paragraph (5) is added to subdivision (a) to clarify the effect of the separate-document requirement of F.R.Civ.P. 58(a) on the entry of a judgment, order, or decree for the purpose of determining the time for filing a notice of appeal.

Rule 7058 adopts F.R.Civ.P. 58 for adversary proceedings. If Rule 58(a) requires a judgment to be set out in a separate document, the time for filing a notice of appeal runs—subject to subdivisions (b) and (c)—from when the judgment is docketed and the judgment is set out in a separate document or, if no separate document is prepared, from 150 days from when the judgment is entered in the docket. The court’s failure to comply with the separate-document requirement of Rule 58(a), however, does not affect the validity of an appeal.

Rule 58 does not apply in contested matters. Instead, under Rule 9021, a separate document is not required, and a judgment or order is effective when it is entered in the docket. The time for filing a notice of appeal under subdivision (a) therefore begins to run upon docket entry in contested matters, as well as in adversary proceedings for which Rule 58 does not require a separate document.

A clarifying amendment is made to subdivision (b)(1) to conform to a recent amendment to F.R.App.P. 4(a)(4)—from which Rule 8002(b)(1) is derived. Former Rule 8002(b)(1) provided that “[i]f a party timely files in the bankruptcy court” certain post-judgment motions, “the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion.” Responding to a circuit split concerning the meaning of “timely” in F.R.App.P. 4(a)(4), the amendment adopts the majority approach and rejects the approach taken in *National*

*Ecological Foundation v. Alexander*, 496 F.3d 466 (6th Cir. 2007). A motion made after the time allowed by the Bankruptcy Rules will not qualify as a motion that, under Rule 8002(b)(1), re-starts the appeal time—and that fact is not altered by, for example, a court order that sets a due date that is later than permitted by the Bankruptcy Rules, another party’s consent or failure to object to the motion’s lateness, or the court’s disposition of the motion without explicit reliance on untimeliness.

Subdivision (c)(1) is revised to conform to F.R.App.P. 4(c)(1), which was recently amended to streamline and clarify the operation of the inmate-filing rule. The rule requires the inmate to show timely deposit and prepayment of postage. It is amended to specify that a notice is timely if it is accompanied by a declaration or notarized statement stating the date the notice was deposited in the institution’s mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage “is being prepaid,” not (as directed by the former rule) that first-class postage “has been prepaid.” This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution’s mail system. A new Director’s Form sets out a suggested form of the declaration.

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the appellate court—district court, BAP, or court of appeals in the case of a direct appeal—has discretion to accept a

declaration or notarized statement at a later date. The rule uses the phrase “exercises its discretion to permit”—rather than simply “permits”—to help ensure that pro se inmates are aware that a court will not necessarily forgive a failure to provide the declaration initially.

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

3 \* \* \* \* \*

4 (c) JOINT CERTIFICATION BY ALL  
5 APPELLANTS AND APPELLEES.

6 (1) How Accomplished. A joint certification by  
7 all the appellants and appellees under 28 U.S.C.  
8 § 158(d)(2)(A) must be made by using the appropriate  
9 Official Form. The parties may supplement the  
10 certification with a short statement of the basis for the  
11 certification, which may include the information listed  
12 in subdivision (f)(2).

13 (2) Supplemental Statement by the Court.  
14 Within 14 days after the parties' certification, the  
15 bankruptcy court or the court in which the matter is  
16 then pending may file a short supplemental statement  
17 about the merits of the certification.

18 \* \* \* \* \*

**Committee Note**

Subdivision (c) is amended to provide authority for the court to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all of the parties to the appeal. It is a counterpart to subdivision (e)(2), which allows a party to file a similar statement when the court certifies direct review on the court's own motion.

The bankruptcy court may file a supplemental statement within 14 days after the certification, even if the appeal is no longer pending before it according to subdivision (b). If the appeal is pending in the district court or BAP during that 14-day period, the appellate court is authorized to file a statement. In all cases, the filing of a statement by the court is discretionary.

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

3 (a) INITIAL MOTION IN THE BANKRUPTCY  
4 COURT.

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

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

9 (B) the approval of a ~~supersedeas bond or~~  
10 other security provided to obtain a stay of  
11 judgment;

12 \* \* \* \* \*

13 (c) FILING A BOND OR OTHER SECURITY. The  
14 district court, BAP, or court of appeals may condition relief  
15 on filing a bond or other ~~appropriate~~ security with the  
16 bankruptcy court.

17 (d) BOND OR OTHER SECURITY FOR A  
18 TRUSTEE OR THE UNITED STATES. The court may

19 require a trustee to file a bond or other appropriate security  
20 when the trustee appeals. A bond or other security is not  
21 required when an appeal is taken by the United States, its  
22 officer, or its agency or by direction of any department of the  
23 federal government.

24 \* \* \* \* \*

**Committee Note**

The amendments to subdivisions (a)(1)(B), (c), and (d) conform this rule with the amendment of Rule 62 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7062. Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b) allows a party to obtain a stay by providing a “bond or other security.”

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

2 \* \* \* \* \*

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

- 8 • leave to appeal;
- 9 • dismissal;
- 10 • a stay pending appeal;
- 11 • approval of a ~~supersedeas~~ supersedeas bond, or other security  
12 provided to obtain a stay of judgment ~~additional~~  
13 ~~security on a bond or undertaking on appeal~~; or
- 14 • any other intermediate order.

15 The bankruptcy clerk must then transmit to the clerk of the  
16 court where the relief is sought any parts of the record

- 17 designated by a party to the appeal or a notice that those parts  
18 are available electronically.

**Committee Note**

The amendment of subdivision (c) conforms this rule with the amendment of Rule 62 F.R.Civ.P., which is made applicable in adversary proceedings by Rule 7062. Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b) allows a party to obtain a stay by providing a “bond or other security.”

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

2 (a) FILING.

3 \* \* \* \* \*

4 (2) *Method and Timeliness.*

5 (A) Nonelectronic Filing.

6 ~~(A)(i)~~ *In General.* ~~Filing~~For a  
7 document not filed electronically, filing may  
8 be accomplished by ~~transmission~~mail  
9 addressed to the clerk of the district court or  
10 BAP. Except as provided in subdivision  
11 ~~(a)(2)(B) and (C)~~ (a)(2)(A)(ii) and (iii), filing  
12 is timely only if the clerk receives the  
13 document within the time fixed for filing.

14 ~~(B)(ii)~~ *Brief or Appendix.* A brief  
15 or appendix not filed electronically is also  
16 timely filed if, on or before the last day for  
17 filing, it is:

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

24                    (ii)• dispatched to a third-party  
25                    commercial carrier for delivery within 3  
26                    days to the clerk, ~~if the court's~~  
27                    ~~procedures so permit or require.~~

28                    ~~(C)~~(iii) *Inmate Filing.* If an  
29                    institution has a system designed for legal  
30                    mail, an inmate confined there must use that  
31                    system to receive the benefit of this  
32                    Rule 8011(a)(2)(A)(iii). A document not  
33                    filed electronically by an inmate confined in  
34                    an institution is timely if it is deposited in the

26 FEDERAL RULES OF BANKRUPTCY PROCEDURE

35 institution's internal mailing system on or  
36 before the last day for filing. ~~If the institution~~  
37 ~~has a system designed for legal mail, the~~  
38 ~~inmate must use that system to receive the~~  
39 ~~benefit of this rule. Timely filing may be~~  
40 ~~shown by a declaration in compliance with 28~~  
41 ~~U.S.C. § 1746 or by a notarized statement,~~  
42 ~~either of which must set forth the date of~~  
43 ~~deposit and state that first-class postage has~~  
44 ~~been prepaid. and:~~

- 45 • it is accompanied by a  
46 declaration in compliance with 28  
47 U.S.C. § 1746—or a notarized  
48 statement—setting out the date of  
49 deposit and stating that first-class  
50 postage is being prepaid; or evidence  
51 (such as a postmark or date stamp)

52                    showing that the notice was so  
53                    deposited and that postage was prepaid;  
54                    or  
55                    •    the appellate court exercises  
56                    its discretion to permit the later filing of  
57                    a declaration or notarized statement that  
58                    satisfies this Rule 8011(a)(2)(A)(iii).

59                    (B) *Electronic Filing.*

60                    (i) *By a Represented Person—*  
61                    *Generally Required; Exceptions.* An entity  
62                    represented by an attorney must file  
63                    electronically, unless nonelectronic filing is  
64                    allowed by the court for good cause or is  
65                    allowed or required by local rule.

66                    (ii) *By an Unrepresented*  
67                    *Individual—When Allowed or Required.* An  
68                    individual not represented by an attorney:

69                           •    may file electronically only  
70                            if allowed by court order or by local  
71                            rule; and

72                           •    may be required to file  
73                            electronically only by court order, or by  
74                            a local rule that includes reasonable  
75                            exceptions.

76                            (iii) Same as a Written Paper. A  
77                            document filed electronically is a written  
78                            paper for purposes of these rules.

79                            ~~(D)~~(C) *Copies.* If a document is filed  
80                            electronically, no paper copy is required. If a  
81                            document is filed by mail or delivery to the district  
82                            court or BAP, no additional copies are required.  
83                            But the district court or BAP may require by local  
84                            rule or by order in a particular case the filing or  
85                            furnishing of a specified number of paper copies.

86

\* \* \* \* \*

87

(c) MANNER OF SERVICE.

88

(1) Nonelectronic Service. Methods. ~~Service~~

89

~~must be made electronically, unless it is being made by~~

90

~~or on an individual who is not represented by counsel~~

91

~~or the court's governing rules permit or require service~~

92

~~by mail or other means of delivery. Service~~

93

Nonelectronic service may be made by or on an

94

unrepresented party by any of the following methods:

95

(A) personal delivery;

96

(B) mail; or

97

(C) third-party commercial carrier for

98

delivery within 3 days.

99

(2) Electronic Service. Electronic service may

100

be made by sending a document to a registered user by

101

filing it with the court's electronic-filing system or by

30 FEDERAL RULES OF BANKRUPTCY PROCEDURE

102 using other electronic means that the person served  
103 consented to in writing.

104 ~~(2)~~(3) *When Service ~~is~~ Complete.* Service  
105 by electronic means is complete on ~~transmission~~filing  
106 or sending, unless the ~~party~~person making service  
107 receives notice that the document was not ~~transmitted~~  
108 ~~successfully~~received by the person served. Service by  
109 mail or by commercial carrier is complete on mailing  
110 or delivery to the carrier.

111 (d) PROOF OF SERVICE.

112 (1) *What ~~is~~ Required.* A document presented  
113 for filing must contain either of the following if it was  
114 served other than through the court's electronic-filing  
115 system:

116 (A) an acknowledgment of service by the  
117 person served; or

118 (B) proof of service consisting of a  
119 statement by the person who made service  
120 certifying:

121 (i) the date and manner of service;

122 (ii) the names of the persons served;

123 and

124 (iii) the mail or electronic address, the  
125 fax number, or the address of the place of  
126 delivery, as appropriate for the manner of  
127 service, for each person served.

128 \* \* \* \* \*

129 (e) SIGNATURE. Every document filed  
130 electronically must include the electronic signature of the  
131 person filing it or, if the person is represented, the electronic  
132 signature of counsel. ~~The electronic signature must be~~  
133 ~~provided by electronic means that are consistent with any~~  
134 ~~technical standards that the Judicial Conference of the~~

135 ~~United States establishes.~~ A filing made through a person's  
136 electronic-filing account and authorized by that person,  
137 together with that person's name on a signature block,  
138 constitutes the person's signature. Every document filed in  
139 paper form must be signed by the person filing the document  
140 or, if the person is represented, by counsel.

#### **Committee Note**

The rule is amended to conform to the amendments to F.R.App.P. 25 on inmate filing, electronic filing, signature, service, and proof of service.

Consistent with Rule 8001(c), subdivision (a)(2) generally makes electronic filing mandatory. The rule recognizes exceptions for persons proceeding without an attorney, exceptions for good cause, and variations established by local rule.

Subdivision (a)(2)(A)(iii) is revised to conform to F.R.App.P. 25(a)(2)(A)(iii), which was recently amended to streamline and clarify the operation of the inmate-filing rule. The rule requires the inmate to show timely deposit and prepayment of postage. It is amended to specify that a notice is timely if it is accompanied by a declaration or notarized statement stating the date the notice was deposited in the institution's mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage "is being prepaid," not (as directed by the former

rule) that first-class postage “has been prepaid.” This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution’s mail system. A new Director’s Form sets out a suggested form of the declaration.

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the appellate court—district court, BAP, or court of appeals in the case of a direct appeal—has discretion to accept a declaration or notarized statement at a later date. The rule uses the phrase “exercises its discretion to permit”—rather than simply “permits”—to help ensure that pro se inmates are aware that a court will not necessarily forgive a failure to provide the declaration initially.

Subdivision (c) is amended to authorize electronic service by means of the court’s electronic-filing system on registered users without requiring their written consent. All other forms of electronic service require the written consent of the person served.

Service is complete when a person files the paper with the court’s electronic-filing system for transmission to a registered user, or when one person sends it to another person by other electronic means that the other person has consented to in writing. But service is not effective if the person who filed with the court or the person who sent by other agreed-upon electronic means receives notice that the paper did not reach the person to be served. The rule does

not make the court responsible for notifying a person who filed the paper with the court's electronic-filing system that an attempted transmission by the court's system failed. But a filer who receives notice that the transmission failed is responsible for making effective service.

As amended, subdivision (d) eliminates the requirement of proof of service when service is made through the electronic-filing system. The notice of electronic filing generated by the system serves that purpose.

Subdivision (e) requires the signature of counsel or an unrepresented party on every document that is filed. 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. A person's electronic-filing account means an account established by the court for use of the court's electronic-filing system, which account the person accesses with the user name and password (or other credentials) issued to that person by the court.

1 **Rule 8013. Motions; Intervention**

2 \* \* \* \* \*

3 (f) FORM OF DOCUMENTS; PAGELLENGTH  
4 LIMITS; NUMBER OF COPIES.

5 \* \* \* \* \*

6 (2) *Format of an Electronically Filed*  
7 *Document.* A motion, response, or reply filed  
8 electronically must comply with the requirements for a  
9 paper version regarding covers, line spacing, margins,  
10 typeface, and type style. It must also comply with the  
11 pagelength limits under paragraph (3).

12 (3) PageLength Limits. ~~Unless the district court~~  
13 ~~or BAP orders otherwise.~~ Except by the district court's  
14 or BAP's permission, and excluding the accompanying  
15 documents authorized by subdivision (a)(2)(C):

16 (A) a motion or a response to a motion ~~must~~  
17 ~~not exceed 20 pages, exclusive of the corporate~~

36 FEDERAL RULES OF BANKRUPTCY PROCEDURE

18 ~~disclosure — statement — and — accompanying~~  
19 ~~documents authorized by subdivision (a)(2)(C)~~  
20 produced using a computer must include a  
21 certificate under Rule 8015(h) and not exceed  
22 5,200 words; and

23 (B) ~~a reply to a response must not exceed~~  
24 ~~10 pages-~~a handwritten or typewritten motion or a  
25 response to a motion must not exceed 20 pages;

26 (C) a reply produced using a computer  
27 must include a certificate under Rule 8015(h) and  
28 not exceed 2,600 words; and

29 (D) a handwritten or typewritten reply must  
30 not exceed 10 pages.

31 \* \* \* \* \*

**Committee Note**

Subdivision (f)(3) is amended to conform to F.R.App.P. 27(d)(2), which was recently amended to replace page limits with word limits for motions and responses produced using a computer. The word limits were derived

from the current page limits, using the assumption that one page is equivalent to 260 words. Documents produced using a computer must include the certificate of compliance required by Rule 8015(h); Official Form 417C suffices to meet that requirement. Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes the accompanying documents required by Rule 8013(a)(2)(C) and any items listed in Rule 8015(h).

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

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

6 \* \* \* \* \*

7 (7) *Length.*

8 (A) *Page ~~h~~Limitation.* A principal brief  
9 must not exceed 30 pages, or a reply brief 15  
10 pages, unless it complies with subparagraph (B)  
11 ~~and (C)~~.

12 (B) *Type-volume ~~h~~Limitation.*

13 (i) A principal brief is acceptable if it  
14 contains a certificate under Rule 8015(h) and:

- 15 • ~~it~~—contains no more than  
16 ~~14,000~~ 13,000 words; or



40 FEDERAL RULES OF BANKRUPTCY PROCEDURE

33                    ~~(i) A brief submitted under~~  
34                    ~~subdivision (a)(7)(B) must include a~~  
35                    ~~certificate signed by the attorney, or an~~  
36                    ~~unrepresented party, that the brief complies~~  
37                    ~~with the type-volume limitation. The person~~  
38                    ~~preparing the certificate may rely on the word~~  
39                    ~~or line count of the word-processing system~~  
40                    ~~used to prepare the brief. The certificate must~~  
41                    ~~state either:~~

- 42                    ~~• the number of words in the~~
- 43                    ~~brief; or~~
- 44                    ~~• the number of lines of~~
- 45                    ~~monospaced type in the brief.~~

46                    ~~(ii) The certification requirement is~~  
47                    ~~satisfied by a certificate of compliance that~~  
48                    ~~conforms substantially to the appropriate~~  
49                    ~~Official Form.~~

50 \* \* \* \* \*

51 (f) LOCAL VARIATION. A district court or BAP  
52 must accept documents that comply with the applicable form  
53 requirements of this rule and the length limits set by Part  
54 VIII of these rules. By local rule or order in a particular case,  
55 a district court or BAP may accept documents that do not  
56 meet all of the form requirements of this rule or the length  
57 limits set by Part VIII of these rules.

58 (g) ITEMS EXCLUDED FROM LENGTH. In  
59 computing any length limit, headings, footnotes, and  
60 quotations count toward the limit, but the following items do  
61 not:

- 62 • the cover page;
- 63 • a corporate disclosure statement;
- 64 • a table of contents;
- 65 • a table of citations;
- 66 • a statement regarding oral argument;

- 67           • an addendum containing statutes, rules, or
- 68           regulations;
- 69           • certificates of counsel;
- 70           • the signature block;
- 71           • the proof of service; and
- 72           • any item specifically excluded by these rules
- 73           or by local rule.

74           (h) CERTIFICATE OF COMPLIANCE.

75           (1) *Briefs and Documents That Require a*  
76           *Certificate.* A brief submitted under  
77           Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)—and a  
78           document submitted under Rule 8013(f)(3)(A),  
79           8013(f)(3)(C), or 8022(b)(1)—must include a  
80           certificate by the attorney, or an unrepresented party,  
81           that the document complies with the type-volume  
82           limitation. The individual preparing the certificate may  
83           rely on the word or line count of the word-processing

84        system used to prepare the document. The certificate  
85        must state the number of words—or the number of lines  
86        of monospaced type—in the document.  
87                (2) *Acceptable Form.* The certificate  
88        requirement is satisfied by a certificate of compliance  
89        that conforms substantially to the appropriate Official  
90        Form.

#### **Committee Note**

The rule is amended to conform to recent amendments to F.R.App.P. 32, which reduced the word limits generally allowed for briefs. When Rule 32(a)(7)(B)'s type-volume limits for briefs were adopted in 1998, the word limits were based on an estimate of 280 words per page. Amended F.R.App.P. 32 applies a conversion ratio of 260 words per page and reduces the word limits accordingly. Rule 8015(a)(7) adopts the same reduced word limits for briefs prepared by computer.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

Subdivision (f) is amended to make clear a court's ability (by local rule or order in a case) to increase the length limits for briefs and other documents. Subdivision (f) already established this authority as to the length limits in Rule 8015(a)(7); the amendment makes clear that this authority extends to all length limits in Part VIII of the Bankruptcy Rules.

A new subdivision (g) is added to set out a global list of items excluded from length computations, and the list of exclusions in former subdivision (a)(7)(B)(iii) is deleted. The certificate-of-compliance provision formerly in subdivision (a)(7)(C) is relocated to a new subdivision (h) and now applies to filings under all type-volume limits (other than Rule 8014(f)'s word limit)—including the new word limits in Rules 8013, 8016, 8017, and 8022. Conforming amendments are made to Official Form 417C.

1 **Rule 8016. Cross-Appeals**

2 \* \* \* \* \*

3 (d) LENGTH.

4 (1) *Page Limitation.* Unless it complies with  
5 paragraphs (2) ~~and (3)~~, the appellant's principal brief  
6 must not exceed 30 pages; the appellee's principal and  
7 response brief, 35 pages; the appellant's response and  
8 reply brief, 30 pages; and the appellee's reply brief, 15  
9 pages.

10 (2) *Type-volume* ~~*Volume*~~ *Limitation.*

11 (A) The appellant's principal brief or the  
12 appellant's response and reply brief is acceptable  
13 if it includes a certificate under Rule 8015(h) and:

14 (i) ~~it~~ contains no more than ~~14,000~~

15 13,000 words; or

16 (ii) ~~it~~ uses a monospaced face and

17 contains no more than 1,300 lines of text.

18 (B) The appellee's principal and response  
19 brief is acceptable if it includes a certificate under  
20 Rule 8015(h) and:

21 (i) ~~it contains no more than 16,500~~  
22 15,300 words; or

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

25 (C) The appellee's reply brief is acceptable  
26 if it includes a certificate under Rule 8015(h) and  
27 contains no more than half of the type volume  
28 specified in subparagraph (A).

29 ~~(D) Headings, footnotes, and quotations~~  
30 ~~count toward the word and line limitations. The~~  
31 ~~corporate disclosure statement, table of contents,~~  
32 ~~table of citations, statement with respect to oral~~  
33 ~~argument, any addendum containing statutes,~~

34 ~~rules, or regulations, and any certificates of~~  
35 ~~counsel do not count toward the limitation.~~

36 ~~(3) Certificate of Compliance. A brief~~  
37 ~~submitted either electronically or in paper form under~~  
38 ~~paragraph (2) must comply with Rule 8015(a)(7)(C).~~

39 \* \* \* \* \*

#### **Committee Note**

The rule is amended to conform to recent amendments to F.R.App.P. 28.1, which reduced the word limits generally allowed for briefs in cross-appeals. When Rule 28.1 was adopted in 2005, it modeled its type-volume limits on those set forth in F.R.App.P. 32(a)(7) for briefs in cases that did not involve a cross-appeal. At that time, Rule 32(a)(7)(B) set word limits based on an estimate of 280 words per page. Amended F.R.App.P. 32 and 28.1 apply a conversion ratio of 260 words per page and reduce the word limits accordingly. Rule 8016(d)(2) adopts the same reduced word limits.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

48 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Subdivision (d) is amended to refer to new Rule 8015(h) (which now contains the certificate-of-compliance provision formerly in Rule 8015(a)(7)(C)).

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

2 (a) DURING INITIAL CONSIDERATION OF A  
3 CASE ON THE MERITS.

4 (1) Applicability. This Rule 8017(a) governs  
5 amicus filings during a court's initial consideration of  
6 a case on the merits.

7 (2) When Permitted. The United States or its  
8 officer or agency or a state may file an amicus-~~curiae~~  
9 brief without the consent of the parties or leave of court.  
10 Any other amicus curiae may file a brief only by leave  
11 of court or if the brief states that all parties have  
12 consented to its filing, but a district court or BAP may  
13 prohibit the filing of or may strike an amicus brief that  
14 would result in a judge's disqualification. On its own  
15 motion, and with notice to all parties to an appeal, the  
16 district court or BAP may request a brief by an amicus  
17 curiae.

50 FEDERAL RULES OF BANKRUPTCY PROCEDURE

18           ~~(b)~~(3)     *Motion for Leave to File.* The motion  
19 must be accompanied by the proposed brief and state:

20                   ~~(1)~~(A)     the movant's interest; and

21                   ~~(2)~~(B)     the reason why an amicus brief is  
22 desirable and why the matters asserted are  
23 relevant to the disposition of the appeal.

24           ~~(c)~~(4)     *Contents and Form.* An amicus brief  
25 must comply with Rule 8015. In addition to the  
26 requirements of Rule 8015, the cover must identify the  
27 party or parties supported and indicate whether the  
28 brief supports affirmance or reversal. If an amicus  
29 curiae is a corporation, the brief must include a  
30 disclosure statement like that required of parties by  
31 Rule 8012. An amicus brief need not comply with Rule  
32 8014, but must include the following:

33                   ~~(1)~~(A)     a table of contents, with page  
34 references;

35                    ~~(2)~~(B) a table of authorities—cases  
36                    (alphabetically arranged), statutes, and other  
37                    authorities—with references to the pages of the  
38                    brief where they are cited;

39                    ~~(3)~~(C) a concise statement of the identity  
40                    of the amicus curiae, its interest in the case, and  
41                    the source of its authority to file;

42                    ~~(4)~~(D) unless the amicus curiae is one  
43                    listed in the first sentence of subdivision (a)(2), a  
44                    statement that indicates whether:

45                    ~~(A)~~(i) a party’s counsel authored  
46                    the brief in whole or in part;

47                    ~~(B)~~(ii) a party or a party’s counsel  
48                    contributed money that was intended to fund  
49                    preparing or submitting the brief; and

50                    ~~(C)~~(iii) a person—other than the  
51                    amicus curiae, its members, or its counsel—

52 contributed money that was intended to fund  
53 preparing or submitting the brief and, if so,  
54 identifies each such person;

55 ~~(5)~~(E) an argument, which may be  
56 preceded by a summary and need not include a  
57 statement of the applicable standard of review;  
58 and

59 ~~(6)~~(F) a certificate of compliance, if  
60 required by Rule 8015(a)(7)(C) or 8015(b)(h).

61 ~~(d)~~(5) *Length.* Except by the district court's  
62 or BAP's permission, an amicus brief must be no more  
63 than one-half the maximum length authorized by these  
64 rules for a party's principal brief. If the court grants a  
65 party permission to file a longer brief, that extension  
66 does not affect the length of an amicus brief.

67 ~~(e)~~(6) *Time for Filing.* An amicus curiae  
68 must file its brief, accompanied by a motion for filing

69 when necessary, no later than 7 days after the principal  
70 brief of the party being supported is filed. An amicus  
71 curiae that does not support either party must file its  
72 brief no later than 7 days after the appellant's principal  
73 brief is filed. The district court or BAP may grant leave  
74 for later filing, specifying the time within which an  
75 opposing party may answer.

76 ~~(f)(7)~~ *Reply Brief.* Except by the district  
77 court's or BAP's permission, an amicus curiae may not  
78 file a reply brief.

79 ~~(g)(8)~~ *Oral Argument.* An amicus curiae may  
80 participate in oral argument only with the district  
81 court's or BAP's permission.

82 (b) DURING CONSIDERATION OF WHETHER  
83 TO GRANT REHEARING.

84 (1) Applicability. This Rule 8017(b) governs  
85 amicus filings during a district court's or BAP's

86 consideration of whether to grant rehearing, unless a  
87 local rule or order in a case provides otherwise.

88 (2) *When Permitted.* The United States or its  
89 officer or agency or a state may file an amicus brief  
90 without the consent of the parties or leave of court.  
91 Any other amicus curiae may file a brief only by leave  
92 of court.

93 (3) *Motion for Leave to File.* Rule 8017(a)(3)  
94 applies to a motion for leave.

95 (4) *Contents, Form, and Length.*  
96 Rule 8017(a)(4) applies to the amicus brief. The brief  
97 must include a certificate under Rule 8015(h) and not  
98 exceed 2,600 words.

99 (5) *Time for Filing.* An amicus curiae  
100 supporting the motion for rehearing or supporting  
101 neither party must file its brief, accompanied by a  
102 motion for filing when necessary, no later than 7 days

103 after the motion is filed. An amicus curiae opposing  
104 the motion for rehearing must file its brief,  
105 accompanied by a motion for filing when necessary, no  
106 later than the date set by the court for the response.

#### **Committee Note**

Rule 8017 is amended to conform to the recent amendment to F.R.App.P. 29, which now addresses amicus filings in connection with petitions for rehearing. Former Rule 8017 is renumbered Rule 8017(a), and language is added to that subdivision (a) to state that its provisions apply to amicus filings during the district court's or BAP's initial consideration of a case on the merits. New subdivision (b) is added to address amicus filings in connection with a motion for rehearing. Subdivision (b) sets default rules that apply when a district court or BAP does not provide otherwise by local rule or by order in a case. A court remains free to adopt different rules governing whether amicus filings are permitted in connection with motions for rehearing and the procedures when such filings are permitted.

The amendment to subdivision (a)(2) authorizes orders or local rules that prohibit the filing of or permit the striking of an amicus brief by party consent if the brief would result in a judge's disqualification. The amendment does not alter or address the standards for when an amicus brief requires a judge's disqualification. It is modeled on an amendment to F.R.App.P. 29(a). A comparable amendment to subdivision (b) is not necessary. Subdivision (b)(1) authorizes local

rules and orders governing filings during a court's consideration of whether to grant rehearing. These local rules or orders may prohibit the filing of or permit the striking of an amicus brief that would result in a judge's disqualification. In addition, under subdivision (b)(2), a court may deny leave to file an amicus brief that would result in a judge's disqualification.

1 **Rule 8018.1. District-Court Review of a Judgment that**  
2 **the Bankruptcy Court Lacked the**  
3 **Constitutional Authority to Enter**

4 If, on appeal, a district court determines that the  
5 bankruptcy court did not have the power under Article III of  
6 the Constitution to enter the judgment, order, or decree  
7 appealed from, the district court may treat it as proposed  
8 findings of fact and conclusions of law.

**Committee Note**

This rule is new. It is added to prevent a district court from having to remand an appeal whenever it determines that the bankruptcy court lacked constitutional authority to enter the judgment, order, or decree appealed from. Consistent with the Supreme Court's decision in *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014), the district court in that situation may treat the bankruptcy court's judgment as proposed findings of fact and conclusions of law. Upon making the determination to proceed in that manner, the district court may choose to allow the parties to file written objections to specific proposed findings and conclusions and to respond to another party's objections, *see* Rule 9033; treat the parties' briefs as objections and responses; or prescribe other procedures for the review of the proposed findings of fact and conclusions of law.

1 **Rule 8021. Costs**

2 \* \* \* \* \*

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

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

9 (2) the preparation and transmission of the  
10 record;

11 (3) the reporter's transcript, if needed to  
12 determine the appeal;

13 (4) premiums paid for a ~~supersedeas~~ bond or  
14 other security bonds to preserve rights pending appeal;  
15 and

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

17 \* \* \* \* \*

**Committee Note**

The amendment of subdivision (c) conforms this rule with the amendment of F.R.Civ.P. 62, which is made applicable in adversary proceedings by Rule 7062. Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b) allows a party to obtain a stay by providing a “bond or other security.”

1 **Rule 8022. Motion for Rehearing**

2 \* \* \* \* \*

3 (b) FORM OF THE MOTION; LENGTH. The  
4 motion must comply in form with Rule 8013(f)(1) and (2).  
5 Copies must be served and filed as provided by Rule 8011.  
6 ~~Unless the district court or BAP orders otherwise, a motion~~  
7 ~~for rehearing must not exceed 15 pages.~~Except by the district  
8 court's or BAP's permission:

9 (1) a motion for rehearing produced using a  
10 computer must include a certificate under Rule 8015(h)  
11 and not exceed 3,900 words; and

12 (2) a handwritten or typewritten motion must  
13 not exceed 15 pages.

**Committee Note**

Subdivision (b) is amended to conform to the recent amendment to F.R.App.P. 40(b), which was one of several appellate rules in which word limits were substituted for page limits for documents prepared by computer. The word limits were derived from the previous page limits using the assumption that one page is equivalent to 260 words.

Documents produced using a computer must include the certificate of compliance required by Rule 8015(h); completion of Official Form 417C suffices to meet that requirement.

Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes any items listed in Rule 8015(g).

1 **Rule 9025. Security: Proceedings Against Sureties**  
2 **Security Providers**

3 Whenever the Code or these rules require or permit ~~the~~  
4 ~~giving of security by a party~~ a party to give security, and  
5 security is given ~~in the form of a bond or stipulation or other~~  
6 ~~undertaking~~ with one or more ~~sureties~~ security providers,  
7 each ~~surety~~ provider submits to the jurisdiction of the court,  
8 and liability may be determined in an adversary proceeding  
9 governed by the rules in Part VII.

**Committee Note**

This rule is amended to reflect the amendment of Rule 62 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7062. Rule 62 allows a party to obtain a stay of a judgment “by providing a bond or other security.” Limiting this rule’s enforcement procedures to sureties might exclude use of those procedures against a security provider that is not a surety. All security providers are brought into the rule by these amendments.

**Appendix:  
Length Limits Stated in Part VIII of the  
Federal Rules of Bankruptcy Procedure**

This chart shows the length limits stated in Part VIII of the Federal Rules of Bankruptcy Procedure. Please bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 8015(g).
- If you are using a word limit or line limit (other than the word limit in Rule 8014(f)), you must include the certificate required by Rule 8015(h).
- If you are using a line limit, your document must be in monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.
- For the limits in Rules 8013 and 8022:
  - You must use the word limit if you produce your document on a computer; and
  - You must use the page limit if you handwrite your document or type it on a typewriter.

	<b>Rule</b>	<b>Document Type</b>	<b>Word Limit</b>	<b>Page Limit</b>	<b>Line Limit</b>
<b>Motions</b>	8013(f)(3)	• Motion  • Response to a motion	5,200	20	Not applicable
	8013(f)(3)	• Reply to a response to a motion	2,600	10	Not applicable
<b>Parties' briefs (where no cross-appeal)</b>	8015(a)(7)	• Principal brief	13,000	30	1,300
	8015(a)(7)	• Reply brief	6,500	15	650

	<b>Rule</b>	<b>Document Type</b>	<b>Word Limit</b>	<b>Page Limit</b>	<b>Line Limit</b>
<b>Parties' briefs (where cross-appeal)</b>	8016(d)	• Appellant's principal brief • Appellant's response and reply brief	13,000	30	1,300
	8016(d)	• Appellee's principal and response brief	15,300	35	1,500
	8016(d)	• Appellee's reply brief	6,500	15	650
<b>Party's supplemental letter</b>	8014(f)	• Letter citing supplemental authorities	350	Not applicable	Not applicable
<b>Amicus briefs</b>	8017(a)(5)	• Amicus brief during initial consideration of case on merits	One-half the length set by the Part VIII Rules for a party's principal brief	One-half the length set by the Part VIII Rules for a party's principal brief	One-half the length set by the Part VIII Rules for a party's principal brief
	8017(b)(4)	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
<b>Motion for rehearing</b>	8022(b)	• Motion for rehearing	3,900	15	Not applicable

**Vt. LBR 3071-1. SECURED CREDITORS' OBLIGATION TO PROVIDE ACCOUNT INFORMATION & STATEMENTS TO DEBTORS POST-PETITION**

- (a) **Purpose; Protection Assured to Secured Creditors.** This Rule has been implemented to ensure the post-petition, routine flow of information from secured creditors to debtors with respect to secured loans in each bankruptcy case where a debtor retains possession of the collateral and is required to make regular installment payments directly to the secured creditor; to ensure that secured creditors provide specific contact information to debtors so that debtors may obtain accurate, up-to-date information on the status of the secured loans as needed; and to clarify that a secured creditor who complies with or makes a good faith attempt to comply with this Rule shall not be found to have violated the automatic stay, provided that the secured creditor's communication with a debtor is not an attempt to collect pre-petition debt.
- (b) **Applicability of Rule Generally.** This Rule applies: (1) in cases filed under Chapters 7, 12, and 13; (2) to consumer loan relationships; and (3) as long as the debtor is protected by the automatic stay. It does not apply to debts evidenced by non-consensual liens (e.g., tax liens, restitution liens).
- (c) **Possible Further Applicability.** For cause shown and after proper notice and a hearing, the Court may direct parties to comply with this Rule with regard to commercial loans or in a Chapter 11 case.
- (d) **Applicability to Debt Secured by a Mortgage on Real Property.** For purposes of this Rule, the term "Mortgage Creditor" shall include any creditor who has a claim secured by a mortgage on real property. The Mortgage Creditor shall provide monthly statements to each Chapter 12 and Chapter 13 debtor who has expressed an intent in his/her plan to retain the Mortgage Creditor's collateral and has expressed an intent to pay the Mortgage Creditor directly (i.e., "outside the plan"), and to each Chapter 7 debtor who has expressed his/her intent in his/her statement of intent (which has been served on the Mortgage Creditor) to retain the Mortgage Creditor's collateral. The monthly statements shall contain at least the following information concerning post-petition mortgage payments to be made directly from the debtor to the Mortgage Creditor:
- (1) the date of the statement and the date the next payment is due;
  - (2) the amount of the current monthly payment and of the next payment due;
  - (3) the amount of the payment attributable to escrow, if any;
  - (4) the amount due for any post-petition arrears, and from what date;
  - (5) the amount of any outstanding post-petition late charges;
  - (6) the amount, date of receipt, and application of all payments received since the date of the last statement;

- (7) any other amount(s) due (e.g., for payment of taxes, insurance, attorney's fees, and/or other expenses), *together with an explanation* of the "other amount due" and, if the Mortgage Creditor has already made a payment on this "other amount due", the date of the payment;
- (8) a telephone number and contact information that the debtor or the debtor's attorney may use to obtain reasonably prompt information regarding the secured loan and recent transactions; and
- (9) the address to which the next payment shall be sent and, if the address has changed since the last statement, a conspicuous statement notifying the debtor of the changed address.

Further, upon reasonable written request of the debtor, the Mortgage Creditor shall provide the following additional information to the debtor:

- (10) the principal balance of the secured loan;
- (11) the original maturity date;
- (12) the current interest rate;
- (13) the current escrow balance, if any;
- (14) the interest paid year-to-date;
- (15) the property taxes paid year-to-date, if any; and/or
- (16) any other amount(s) due (e.g., for payment of taxes, insurance, attorney's fees, and/or other expenses), *together with an explanation* of the "other amount due" and, if the Mortgage Creditor has already made a payment on this "other amount due", the date of the payment.

Mortgage Creditors are not required to send monthly statements to Chapter 12 and Chapter 13 debtors who make their post-petition mortgage payments via the case trustee (i.e., "through the plan"). However, to the extent they choose to do so, and such monthly statements comply with this paragraph, Mortgage Creditors shall be entitled to the protection articulated in paragraph (a), above.

- (e) **Applicability to Other Secured Debts.** For the purposes of this Rule, (1) the term "Creditor" shall include any creditor who holds a claim secured by personal property and any lessor of assumed leases on personal property; (2) "other secured debt" shall include all debts secured by property other than as provided for by paragraph (d) above, and assumed leases on personal property. The Creditor shall provide monthly statements or other forms of invoicing (e.g., a coupon book) to each Chapter 12 and Chapter 13 debtor who has expressed an intent in his/her plan to retain the Creditor's collateral and/or assume the lease, and has expressed an intent to pay the Creditor directly (i.e., "outside the plan"), and to each Chapter 7 debtor who has expressed his/her intent in his/her statement of intent (and served a copy of that statement on the Creditor) to retain the Creditor's collateral and/or assume the lease. The monthly statements or other forms of invoicing shall contain the same or substantially similar information as that provided pre-petition.

Creditors are not required to send monthly statements or other forms of invoicing to Chapter 12 and Chapter 13 debtors who make their post-petition mortgage payments via the case trustee (i.e., “through the plan”). However, to the extent they choose to do so, and such monthly statements or other forms of invoicing contain the same or substantially similar information as that provided pre-petition, the Creditors shall be entitled to the protection articulated in paragraph (a), above.

- (f) **Additional Communication a Secured Creditor May Have With a Debtor Without Violating the Automatic Stay.** A secured creditor contacting a debtor to inquire or request proof as to the status of insurance coverage on property that is collateral for the secured creditor’s claim does not violate the automatic stay, unless, in its communication with the debtor, the secured creditor also seeks to collect a debt.
- (g) **Forms of Communication Generally.** A secured creditor is considered to have complied with this Rule when it has transmitted the requisite monthly statements, other forms of invoicing, or additional requested information to the debtor in the manner normally utilized by the secured creditor. However, the secured creditor and debtor may agree to a form of communication not routinely used by the secured creditor (e.g., e-mail versus U.S. mail) to transmit documents to the debtor. See also, e.g., Bankruptcy Rule 9036. It is the debtor’s duty to provide the secured creditor with his/her current address and such contact information as is necessary to facilitate receipt of any document(s) transmitted by the secured creditor.
- (h) **Waiver of Strict Compliance.** If a Mortgage Creditor’s, or Creditor’s, billing system provides monthly statements or other forms of invoicing that substantially comply with this Rule, but does not fully conform to all of its requirements, the Mortgage Creditor, or Creditor, may request that the debtor accept such monthly statements or other forms of invoicing, and the debtor may do so. If the debtor declines to accept the non-conforming monthly statements or other forms of invoicing, a Mortgage Creditor, or Creditor, may file a motion, on notice to the debtor and the debtor’s attorney, if any, requesting a determination from the Court that cause exists to allow such non-conforming monthly statements or other forms of invoicing to satisfy the Mortgage Creditor’s, or Creditor’s, obligations under this Rule. For cause shown, the Court may grant a waiver for an individual case or for multiple cases, and for either a limited or unlimited time period. However, no waiver will be granted unless the proffered monthly statements or other forms of invoicing substantially comply with this Rule and the Mortgage Creditor, or Creditor, has demonstrated that it would be an undue hardship for it to strictly comply with the Rule.
- (i) **Motion to Compel Compliance.** A debtor may file a motion to compel a secured creditor’s compliance with this Rule where the debtor has evidence that a secured creditor has not complied with the Rule for at least 30 days. However, the debtor must first make a good faith effort to contact the offending secured creditor to determine the cause for non-compliance, including inquiring on the status of the secured creditor’s efforts to provide statements in compliance with this Rule. Debtor’s motion to compel must include a description of (1) the debtor’s pre-motion good faith effort(s), (2) any response by the secured creditor, and (3) any harm the debtor has suffered as a result of the secured creditor’s non-compliance.

#### PART IV



Cited

As of: September 10, 2018 4:05 PM Z

## *In re Pillow*

United States Bankruptcy Court for the Western District of Michigan

March 18, 2013, Decided

Case No. DK 11-11688

### Reporter

2013 Bankr. LEXIS 5711 \*

In re: COLLENE MAE PILLOW, Debtor.

### Core Terms

notice, changes, monthly, twenty-one, modify, obligations, reporting, parties, lender, interest rate, adjustments, days, documents, enlarge, reporting requirements, time period, interval, mortgage, orders, costs

### Case Summary

#### Overview

**HOLDINGS:** [1]-In place of the requirement under *Fed. R. Bankr. P. 3002.1* that a creditor report payment changes not later than 21 days before the change takes effect, for purposes of a home equity line of credit, the creditor bank was permitted by the court to adhere to a six month reporting interval; [2]-Taking into account the purpose of *Fed. R. Bankr. P. 3002.1* and the clerical and legal expenses associated with preparing, filing, and serving monthly payment change notices for nominal or negative adjustments supported the bank's position that the notice requirement imposed a unique burden in this particular case; [3]-Enlarging the reporting periods under *Fed. R. Bankr. P. 9006* mitigated the burden and expense of complying with the time periods that would otherwise apply under *Fed. R. Bankr. p. 3002.1(b)* and (c).

#### Outcome

Creditor motion granted.

### LexisNexis® Headnotes

Bankruptcy Law > Claims > Proof of Claim > Effects & Procedures

#### [HNI](#) **Proof of Claim, Effects & Procedures**

See *Fed. R. Bankr. P. 3002.1(b)*.

Bankruptcy Law > Claims > Proof of Claim > Effects & Procedures

#### [HN2](#) **Proof of Claim, Effects & Procedures**

Like all rules, *Fed. R. Bankr. P. 3002.1* imposes burdens on the parties in interest, including residential mortgage lenders.

Bankruptcy Law > Claims > Proof of Claim > Effects & Procedures

Bankruptcy Law > Individuals With Regular Income > Plans > Plan Contents

#### [HN3](#) **Proof of Claim, Effects & Procedures**

The purpose of *Fed. R. Bankr. P. 3002.1* is to permit debtors to cure and maintain under [11 U.S.C.S. § 1322\(b\)\(5\)](#) during their bankruptcies, and avoid unhappy surprises when their plan terms

come to an end.

Bankruptcy Law > Administrative  
Powers > General Overview

#### [HN4](#) [↓] **Bankruptcy Law, Administrative Powers**

[Fed. R. Bankr. P. 9029](#) does not permit any court to modify any national rule. However, [Fed. R. Bankr. P. 9006\(b\)](#) grants the court authority to enlarge deadlines prescribed in the rules or by court order, subject to enumerated exceptions or conditions.

Bankruptcy Law > Administrative  
Powers > General Overview

#### [HN5](#) [↓] **Bankruptcy Law, Administrative Powers**

See [Fed. R. Bankr. P. 9006\(b\)\(1\)](#).

Bankruptcy Law > Administrative  
Powers > General Overview

#### [HN6](#) [↓] **Bankruptcy Law, Administrative Powers**

The language in [Fed. R. Bankr. P. 9006](#) is inescapably broad and flexible, using such phrases as "at any time," "in its discretion," "with or without a motion," and "for cause." These phrases echo other signals in the rules directing the court to apply the rules in a practical way to secure the just, speedy, and inexpensive determination of every case and proceeding. [Fed. R. Bankr. P. 1001](#).

Bankruptcy Law > Claims > Proof of  
Claim > Effects & Procedures

Bankruptcy Law > Administrative  
Powers > General Overview

#### [HN7](#) [↓] **Proof of Claim, Effects & Procedures**

Until the parties devise a practical solution, or the Supreme Court includes a safety valve within *Fed. R. Bankr. P. 3002.1* itself, or excludes the new rule from the scope of [Fed. R. Bankr. P. 9006](#), the United States Bankruptcy Court for the Western District of Michigan will continue to apply [Fed. R. Bankr. P. 9006](#) to motions seeking relief from the time periods under *Fed. R. Bankr. P. 3002.1*, insisting each time, of course, that the movant establish cause.

**Counsel:** [\*1] For Collene Mae Pillow, Debtor: Roger J. Bus, Debt Relief Law Center, Kalamazoo, MI.

Trustee: Barbara P. Foley, Chapter 13 Trustee's Office, Kalamazoo, MI.

**Judges:** PRESENT: HONORABLE SCOTT W. DALES, United States Bankruptcy Judge.

**Opinion by:** SCOTT W. DALES

#### **Opinion**

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#### OPINION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES

United States Bankruptcy Judge

Fifth Third Bank (the "Bank") filed a motion for an order relaxing the mortgage payment reporting requirements that would otherwise apply under *Rule 3002.1(b)* (the "Bank's Motion," DN 39).<sup>1</sup> After the notice period under [LBR 9013\(c\)\(2\)](#) passed without objection, the court entered its order granting the Bank's Motion under [Rule 9006](#) (the "Order," DN 42). The United States Trustee ("UST") timely filed a motion for reconsideration of the Order pursuant to [Rule 9024](#) (the "UST's

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<sup>1</sup> In this Opinion and Order, each reference to a "Rule" or "the rules" is a reference to one or more of the Federal Rules of Bankruptcy Procedure, unless otherwise indicated.

Motion," DN 43), arguing that the UST did not receive notice of the Bank's Motion, and challenging the court's authority to modify the reporting requirements under *Rule 3002.1*. Although not a party with a financial stake in this case, the UST has statutory authority to raise and be heard on any issue.<sup>2</sup> Therefore, the court announced its intention at the March 6, 2013 hearing to reconsider the Order and review the Bank's Motion *de novo*, keeping in mind [\*2] the UST's position.

After reviewing the authorities that the parties called to the court's attention and considering the arguments advanced during the March 6, 2013 hearing, the court stands by its original decision to relax the reporting requirements under the circumstances of this case, with a minor revision described below.

## I. JURISDICTION

The court has jurisdiction over the chapter 13 bankruptcy case of Collene Mae Pillow (the "Debtor") pursuant to 28 U.S.C. § 1334(a), and the case and this contested matter have been referred to the bankruptcy [\*3] court under *LCivR. 83.2(a)* (W.D. Mich.) and 28 U.S.C. §157(a). The contested matter concerns the administration of the case, and is therefore a "core" proceeding. 28 U.S.C. § 157(b)(2)(A).

## II. ANALYSIS

In their papers and again during oral argument, the parties referred the court to *Rule 3002.1* and *Rule 9006*. They agree that the Bank holds a claim falling within the ambit of *Rule 3002.1* because it is secured by the Debtor's principal residence and the Debtor has provided for the claim under *11 U.S.C.*

§ 1322(b)(5). See *Fed. R. Bankr. P. 3002.1(a)*. As a result, the parties agree that the Bank is subject to the reporting obligations prescribed in *Rule 3002.1(b)*. Accordingly, without the relief granted in the Order, the Bank would be obligated to file a notice of payment change every month, and do so no later than twenty-one days before the payment change takes effect. The UST, however, does not agree that *Rule 9006* authorizes the court to modify the twenty-one day notice requirement under *Rule 3002.1(b)* as the court did in the Order. At oral argument, the UST's counsel suggested that extending the deadline to file the reports in response to the Bank's Motion "is a different animal" than the enlargement contemplated under *Rule 9006*, and effectively re-writes *Rule 3002.1(b)*. See Transcript of hearing held March 6, 2013 ("Tr.") at 14:23.

By way of background, the Bank's [\*4] claim arises from a home equity line of credit ("HELOC") which is a revolving or "open end" credit arrangement secured by residential real estate. See Bank's Motion at Exh. A. Under the loan documents, the interest rate on the HELOC, and therefore the Debtor's payment obligation, changes monthly, though not necessarily dramatically. More specifically, as the Wall Street Journal's published "Prime Rate" fluctuates on "the business day immediately preceding the first business day of each month," the Debtor's payment obligation changes. See Bank's Motion at Exh. A (Equity Flexline Credit Agreement, Security Agreement and Federal Truth in Lending Initial Disclosure at ¶ 8). Every time the payment changes, regardless of the frequency, the Bank concedes it is obligated to give notice of this change to the Debtor, her lawyer and the chapter 13 trustee. The applicable rule provides as follows:

**HNI** [↑] The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the

<sup>2</sup> See *11 U.S.C. § 307*. The docket in this matter establishes that the Bank did not serve the Bank's Motion upon the UST, contrary to the representation in the applicable certificate of service. The Bank evidently assumed, incorrectly, that the UST receives electronic service in all cases. By local rule, however, there is no general, mandatory service on the UST in chapter 13 cases. See *LBR 5005-3*. Given the volume of cases, automatic, electronic service on the UST would impose a substantial burden on his office.

new amount is due.

*Fed. R. Bankr. P. 3002.1(b)*. Under the [\*5] circumstances of this case, the Bank would have approximately nine days to calculate the payment change and communicate that information to counsel in time for counsel to prepare and file the payment change notice with the court no later than twenty-one days before the change takes effect in the next billing cycle. This is an exceedingly small window.

The Advisory Committee Note to this relatively new rule explains the drafters' purpose in imposing the notification requirements:

In order to be able to fulfill the [cure and maintain] obligations of [§ 1322\(b\)\(5\)](#), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage, *see* [Rule 3001\(c\)\(2\)](#), and the amount of the postpetition payment obligations. If the latter amount changes over time, due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if appropriate, and to adjust postpetition mortgage payments to cover any undisputed claimed adjustment.

*See Fed. R. Bankr. P. 3002.1* (Advisory [\*6] Committee Note (2011)). Ultimately, the drafters hoped that by requiring lenders to give periodic notice of payment changes, debtors could avoid the shock that some have experienced at the end of their plan terms upon discovering that, despite having made all payments in good faith, their mortgage arrears quietly grew -- in some instances, substantially. The culprits usually were tax and insurance escrow changes, interest rate adjustments, late payments, appraisal fees, and collection costs. Some debtors who complied with their plan obligations and received a chapter 13

discharge nevertheless found themselves facing foreclosure because they were not aware that their plan payments were inadequate to cure and maintain the very defaults and obligations that prompted them to seek bankruptcy protection in the first place. *Rule 3002.1* addresses this problem in several ways, principally by requiring periodic disclosures. [HN2](#)<sup>[↑]</sup> Like all rules, *Rule 3002.1* imposes burdens on the parties in interest, including residential mortgage lenders.

Citing the "unique burden" that the rule imposes on it as the holder of a HELOC loan with frequent payment adjustments, the Bank filed its motion seeking relief from what would, in effect, [\*7] amount to giving monthly notices. In place of the requirement to report payment changes not later than twenty-one days before the change takes effect, the Bank proposed, and the court approved, a six month reporting interval, citing its authority to enlarge deadlines under [Rule 9006](#). *See* Order at (unnumbered) ¶¶ 3 and 5.<sup>3</sup>

At the March 6, 2013, hearing, counsel for the UST argued that the Bank has in fact filed two notices under *Rule 3002.1*, contradicting the Bank's argument that the notification requirements are "virtually impossible" to meet. *See* Bank's Motion at p. 4 (supporting brief at p. 2). Putting aside the Bank's hyperbole, however, the thrust of its argument is that giving notice is impractical. Stated differently, the Bank argues that giving notice every month for *de minimis* changes is burdensome, taking into account the purpose of *Rule 3002.1*.

Moreover, the Bank's notices, filed after the UST [\*8] filed its motion, actually fortify the Bank's contention that the requirement is burdensome: the Bank's first notice shows that between January and February, the monthly

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<sup>3</sup> Artlessly and somewhat inconsistently, the Order purported to "excuse" the Bank from the notice requirement of *Rule 3002.1*. Fairly construed, rather than excusing the Bank from giving notice of payment changes under the rule, the Order substituted a six month reporting interval for each monthly period that otherwise would apply.

payment changed from \$117.72 to \$120.40 -- a mere \$2.68. At the hearing, Bank's counsel stated without contradiction that in other months the payment has changed by as little as thirty-two cents. *See* Tr. at 9:25. Giving monthly notice of these small changes does not materially advance [HN3](#)<sup>[↑]</sup> the purpose of *Rule 3002.1*, which (as noted above) is to permit debtors to "cure and maintain" under [§ 1322\(b\)\(5\)](#) during their bankruptcies, and avoid unhappy surprises when their plan terms come to an end.

In addition, the clerical and legal expenses associated with preparing, filing, and serving monthly payment change notices for nominal or negative adjustments support the Bank's position that the notice requirement imposes a "unique burden" in this particular case. During the hearing, despite concurring in the UST's Motion, counsel for the chapter 13 trustee (the "Trustee") nevertheless stated that the Bank's monthly reporting would impose a burden on his client. *See* Tr. at 12:3 (acknowledging burden on the Bank, and noting that the reporting is "also really [[\\*9](#)] burdensome on the trustee"). Furthermore, under most consumer loan documents, including the HELOC documents in this case, the borrower is ultimately responsible for the lender's collection costs. *See* Bank's Motion at Exh. A, ¶¶ 22-23. In other words, for HELOC loans like this one with foreseeably modest monthly payment changes, the creditors, debtors, and trustees will bear the cost of compliance with *Rule 3002.1*. Significantly, none of these parties opposed the Bank's Motion, at least not initially.<sup>4</sup> It seems safe to assume that the lender who incurs collection costs for complying with *Rule 3002.1(b)* will seek to pass along the costs to the borrower under the loan documents. If so, *Rule 3002.1(c)* will require the lender to give another notice within

180 days after incurring the expense. Assuming monthly payment adjustments lead to monthly notices (and monthly charges), in six months the lender will be giving two monthly notices, one under *Rule 3002.1(b)* for the interest rate change, and one under *rule 3002.1(c)* for the cost of giving the first monthly notice. Over a five year plan period, a debtor could be required to pay substantial additional collection costs to compensate her HELOC lender for giving notice of payment changes in the range of \$1.00-\$3.00 [[\\*10](#)] per month, all in the name of transparency. Enlarging the reporting periods under [Rule 9006](#) mitigates the burden and expense of complying with the time periods that would otherwise apply under *Rule 3002.1(b)* and (c).

In its Motion, the Bank cited general orders from bankruptcy courts in other districts that attempt to address the problem of revolving or open-end credit agreements and postpetition arrears. It also cited [Rule 9006](#), governing calculation of, and relief from, various time periods in bankruptcy cases.

The court does not regard the Bank's citation to other courts' general orders as particularly persuasive because the orders do not apply in this district and, in any event, have generally been abrogated. At most, they show that these courts have attempted to create disclosure obligations without the burdens that *Rule 3002.1(b)* imposes on HELOC lenders. Even if the general orders were not abrogated [[\\*11](#)] by the courts themselves, [HN4](#)<sup>[↑]</sup> [Rule 9029](#) does not permit any court to modify any national rule. Because of this limitation, the court is more receptive to the Bank's reliance on [Rule 9006](#) and the "case by case" safety-valve provided under that rule.

Specifically, [Rule 9006\(b\)](#) grants the court authority to enlarge deadlines prescribed in the rules or by court order, subject to enumerated exceptions or conditions:

[HN5](#)<sup>[↑]</sup> Except as provided in paragraphs (2) and (3) of this subdivision, when an act is

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<sup>4</sup>Indeed, the Trustee has agreed in at least one other case to substitute a six month interval for the twenty-one day notice that otherwise would apply. *See* Stipulation Resolving Creditor Fifth Third Bank's Motion to Be Excused from Filing a Notice of Payment Change (DN 33) at ¶ 2, filed May 23, 2012 in *In re Prestly*, Case No. 10-13560-SWD.

required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

[Fed. R. Bankr. P. 9006\(b\)\(1\)](#). The court notes that [paragraphs \(2\) and \(3\) of Rule 9006\(b\)](#) do not mention [Rule 3002.1](#), and therefore the relief that [Rule 9006](#) affords may apply to the time periods prescribed in [Rule 3002.1](#).

Moreover, [HN6](#)<sup>[↑]</sup> the language in [Rule 9006](#) is inescapably broad and flexible, using such phrases as "at any [\*12] time," "in its discretion," "with or without a motion," and "for cause." These phrases echo other signals in the rules directing the court to apply the rules in a practical way to secure the "just, speedy, and inexpensive determination of every case and proceeding." [Fed. R. Bankr. P. 1001](#).

Viewing the Bank's Motion through the lens of [Rule 9006](#), giving twenty-one days advance notice of payment changes under [Rule 3002.1\(b\)](#) is an act "required . . . to be done at or within a specified period by these rules or by a notice given thereunder," and therefore within the scope of [Rule 9006\(b\)\(1\)](#). The Bank sought relief from this time period by filing a motion, and as "cause" articulated the "unique burden" associated with the twenty-one day period, given the nature of the HELOC loan with its nominal but monthly interest rate adjustment. In response to the motion, which drew no objection from the only parties with a concrete stake in the matter and the only parties entitled under the rules to notice of payment changes,<sup>5</sup> the

court entered its Order relaxing the reporting requirements, concluding that the Bank's Motion established cause to modify the twenty-one day period in this case under [Rule 9006\(b\)](#).

The UST, however, takes a different view, arguing that [Rule 9006](#) does not authorize the court to modify the reporting requirements of [Rule 3002.1](#). The court respectfully disagrees. In its Order, the court did not intend to excuse the Bank from reporting, but simply modified the deadlines for doing so, after taking into account the cause associated with HELOC loans. The UST's citation to [In re Adkins, 477 B.R. 71, 74 \(Bankr. N.D. Ohio 2012\)](#), is not particularly instructive. The court does not quarrel with that decision to the extent it stands for the proposition that [Rule 3002.1](#) itself provides no safety valve to address burdensome or impractical application. The *Adkins* court, however, did not consider whether another rule, such as [Rule 9006](#), might provide relief.

As for Judge Gregg's bench ruling in another case withholding similar relief,<sup>6</sup> the UST's citation to the resulting order is similarly unpersuasive. First, without the benefit of the transcript of the oral ruling, the court cannot determine what factors influenced the decision. Second, the court doubts that Judge Gregg intended his oral ruling on this new and important issue to have precedential effect, at least [\*14] not before he issues a published opinion setting forth his reasoning. The court hesitates to rely on Judge Gregg's unwritten ruling in *May*, and doubts that he intended it as the last word on this issue in our district.

On reconsideration, the court recognizes that it might have done a better job of balancing the burdens the Bank described against the concerns the UST expressed in his motion (and that motivated the drafters of [Rule 3002.1\(b\)](#)), namely preventing the Debtor from unwittingly falling way

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the rule [\*13] omits the UST, for practical reasons. See also [LBR 5005-3](#) (Service of Documents on the United States Trustee).

<sup>5</sup> [Rule 3002.1](#) requires the Bank to notify the Trustee and the Debtor;

<sup>6</sup> *In re May*, Case No. 12-07004-JDG.

behind on her mortgage debt. Although the court doubts that there will be significant payment changes resulting from the interest rate adjustments under the HELOC in this case, there may nevertheless be payment changes that the Debtor will need time to account for before exiting bankruptcy. Therefore, the court will adhere to its decision to permit six month reporting intervals, but will require quarterly reporting in the last year of the Debtor's plan term. This should give the Debtor ample time to address the impact of any modest payment changes before she concludes her case. Moreover, if developments in the case persuade the Debtor or the Trustee that cause exists to [\*15] revisit the reporting interval, the court will consider readjusting the period in response to a motion under [Rule 9006](#).

### III. CONCLUSION AND ORDER

If the drafters of the rules intended to make the twenty-one day time period impregnable, they could have included *Rule 3002.1* among the rules listed in [Rule 9006\(b\)\(2\)](#) or [\(b\)\(3\)](#). They did not. [HN7](#)<sup>7</sup> Until the parties devise a practical solution,<sup>7</sup> or the Supreme Court includes a safety valve within *Rule 3002.1* itself,<sup>8</sup> or excludes the new rule from the scope of [Rule 9006](#), the court will continue to apply [Rule 9006](#) to motions seeking relief from the time periods under *Rule 3002.1*, insisting each time, of course, that the movant establish cause. The UST's position gives too little weight to the court's authority under [Rules 1001](#) and [9006\(b\)](#) and the finding of cause in the context of this case involving the inevitably

<sup>7</sup>Modifying the twenty-one day period is not the only possible solution to the problem. It is conceivable, for example, that the Bank and the Debtor might mitigate the hardships imposed by the rule by agreeing to modify the payment provisions of the HELOC. The court, however, does not have the authority to order the modification, nor may the Supreme Court "abridge, [\*16] enlarge, or modify any substantive right" of the Bank by promulgating any rule, including *Rule 3002.1*. See [28 U.S.C. § 2075](#); cf. [11 U.S.C. § 1322\(b\)\(2\)](#). Nothing in this Opinion and Order modifies the rights or obligations of the Bank or the Debtor under their loan documents.

<sup>8</sup>Inserting the phrase "Unless the court, for cause, orders otherwise," at the beginning of *Rule 3002.1(b)* would probably suffice.

frequent and predictably modest payment changes associated with the HELOC loan.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The UST's Motion (DN 43) is GRANTED only to the extent it seeks reconsideration, and on reconsideration, the court's Order (DN 42) is VACATED;
2. The Trustee's concurrence (DN 51), to the extent it requests relief, is DENIED;
3. The Bank's Motion (DN 39) is GRANTED as provided herein:
  - a. The Trustee shall continue to pay the monthly amount indicated in the Bank' last payment change notice and notices filed thereafter; and
  - b. The Bank shall file a notice of payment change on or about the date that is six months after entry of the last payment change notice, and every six months thereafter, provided, however, that during the last year of the Debtor's plan, the Bank shall file quarterly notices of any payment changes.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Opinion and Order pursuant [\*17] to [Fed. R. Bankr. P. 9022](#) and [LBR 5005-4](#) upon the Debtor, Debtor's counsel, Panayiotis Marselis, Esq., Dean T. Rietberg, Esq., and Manish Joshi, Esq.

**IT IS SO ORDERED.**

**Dated March 18, 2013**

/s/ Scott W. Dales

Scott W. Dales

United States Bankruptcy Judge.

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