

AMENDMENTS TO THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT
OF THE UNITED STATES

TRANSMITTING

AMENDMENTS AND AN ADDITION TO THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE THAT HAVE BEEN ADOPTED BY THE
SUPREME COURT, PURSUANT TO 28 U.S.C. 2075; PUBLIC LAW 88-
623, SEC. 1 (AS AMENDED BY PUBLIC LAW 103-394, SEC. 104(f));
(108 STAT. 4110)



APRIL 25, 2023.—Referred to the Committee on the Judiciary and ordered
to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 24, 2023.

Hon. KEVIN MCCARTHY,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have the honor to submit to the Congress amendments and an addition to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying the amended and additional rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 19, 2022; a blackline version of the rules with committee notes; an excerpt from the September 2022 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and excerpts from the May 2022 reports of the Advisory Committee on Bankruptcy Rules.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

April 24, 2023

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. The Federal Rules of Bankruptcy Procedure are amended to include amendments to Rules 3011, 8003, and 9006, and to add new Rule 9038.

[*See infra* pp. _____.]

2. The foregoing amendments and addition to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2023, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. THE CHIEF JUSTICE is authorized to transmit to the Congress the foregoing amendments and addition to the Federal Rules of Bankruptcy Procedure in accordance with the provisions of Section 2075 of Title 28, United States Code.

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

**Rule 3011. Unclaimed Funds in Cases Under Chapter
7, Subchapter V of Chapter 11, Chapter
12, and Chapter 13**

(a) The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347 of the Code.

(b) On the court's website, the clerk must provide searchable access to information about funds deposited under § 347(a). The court may, for cause, limit access to information about funds in a specific case.

**Rule 8003. Appeal as of Right—How Taken;
Docketing the Appeal**

(a) FILING THE NOTICE OF APPEAL.

* * * * *

(3) *Contents.* The notice of appeal

must:

(A) conform substantially

to the appropriate Official Form;

(B) be accompanied by

the judgment—or the appealable order or decree—from which the appeal is taken; and

(C) be accompanied by

the prescribed fee.

(4) *Merger.* The notice of appeal

encompasses all orders that, for purposes of appeal, merge into the identified judgment or appealable order or decree. It is not

necessary to identify those orders in the notice of appeal.

(5) *Final Judgment.* The notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Rule 7058, if the notice identifies:

(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 8002(b)(1).

(6) *Limited Appeal.* An appellant may identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, specific

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identifications do not limit the scope of the notice of appeal.

(7) *Impermissible Ground for Dismissal.* An appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into that judgment or appealable order or decree.

(8) *Additional Copies. * * **

* * * * *

Rule 9006. Computing and Extending Time; Time for Motion Papers

(a) COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.

* * * * *

(6) *“Legal Holiday” Defined.* “Legal holiday” means:

(A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

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(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located. (In this rule, "state" includes the District of Columbia and any United States commonwealth or territory.)

* * * * *

Rule 9038. Bankruptcy Rules Emergency

(a) CONDITIONS FOR AN EMERGENCY.

The Judicial Conference of the United States may declare a Bankruptcy Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a bankruptcy court, substantially impair the court's ability to perform its functions in compliance with these rules.

(b) DECLARING AN EMERGENCY.

(1) *Content.* The declaration must:

(A) designate the bankruptcy court or courts affected;

(B) state any restrictions on the authority granted in (c); and

(C) be limited to a stated period of no more than 90 days.

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(2) *Early Termination.* The Judicial Conference may terminate a declaration for one or more bankruptcy courts before the termination date.

(3) *Additional Declarations.* The Judicial Conference may issue additional declarations under this rule.

(c) TOLLING AND EXTENDING TIME LIMITS.

(1) *In an Entire District or Division.* When an emergency is in effect for a bankruptcy court, the chief bankruptcy judge may, for all cases and proceedings in the district or in a division:

(A) order the extension or tolling of a Bankruptcy Rule, local rule, or order that requires or allows a court, a clerk, a party in interest, or the United States trustee, by a specified deadline, to commence a proceeding, file or send a document, hold or

conclude a hearing, or take any other action, despite any other Bankruptcy Rule, local rule, or order; or

(B) order that, when a Bankruptcy Rule, local rule, or order requires that an action be taken “promptly,” “forthwith,” “immediately,” or “without delay,” it be taken as soon as is practicable or by a date set by the court in a specific case or proceeding.

(2) *In a Specific Case or Proceeding.*

When an emergency is in effect for a bankruptcy court, a presiding judge may take the action described in (1) in a specific case or proceeding.

(3) *When an Extension or Tolling Ends.*

A period extended or tolled under (1) or (2) terminates on the later of:

(A) the last day of the time period as extended or tolled or 30 days after the

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emergency declaration terminates, whichever is earlier; or

(B) the last day of the time period originally required, imposed, or allowed by the relevant Bankruptcy Rule, local rule, or order that was extended or tolled.

(4) *Further Extensions or Shortenings.*

A presiding judge may lengthen or shorten an extension or tolling in a specific case or proceeding. The judge may do so only for good cause after notice and a hearing and only on the judge's own motion or on motion of a party in interest or the United States trustee.

(5) *Exception.* A time period imposed by statute may not be extended or tolled.



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

HONORABLE ROSLYNN R. MAUSKOPF
Secretary

October 19, 2022

MEMORANDUM

To: The Chief Justice of the United States
The Associate Justices of the Supreme Court

From: Judge Roslynn R. Mauskopf *Roslynn R. Mauskopf*

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit for the Court's consideration proposed amendments to Rules 3011, 8003, and 9006, and new Rule 9038 of the Federal Rules of Bankruptcy Procedure, which have been approved by the Judicial Conference. The Judicial Conference recommends that the amended rules and new rule be adopted by the Court and transmitted to Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting (i) clean and blackline copies of the amended rules and new rule along with committee notes; (ii) an excerpt from the September 2022 report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iii) excerpts from the May 2022 reports of the Advisory Committee on Bankruptcy Rules.

Attachments



April 2023: Before transmitting this package to Congress, a correction of a scrivener's error in the committee note for Rule 8003 was completed. The phrase "or part thereof" was updated to "or the part of it" to accurately quote the text of the rule.

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

1 **Rule 3011. Unclaimed Funds in Cases Under Chapter**
2 **7, Subchapter V of Chapter 11, Chapter**
3 **12, and Chapter 13²**

4 (a) The trustee shall file a list of all known names
5 and addresses of the entities and the amounts which they are
6 entitled to be paid from remaining property of the estate that
7 is paid into court pursuant to § 347 of the Code.

8 (b) On the court's website, the clerk must
9 provide searchable access to information about funds
10 deposited under § 347(a). The court may, for cause, limit
11 access to information about funds in a specific case.

Committee Note

Rule 3011 is amended to require the clerk to provide searchable access (as by providing a link to the U.S. Bankruptcy Unclaimed Funds Locator) on the court's website to information about unclaimed funds deposited pursuant to § 347(a). The court may limit access to

¹ New material is underlined.

² The title of Rule 3011 reflects amendments currently proposed to take effect on December 1, 2022, barring any contrary action by Congress.

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information about such funds in a specific case for cause, including, for example, if such access risks disclosing the identity of claimants whose privacy should be protected, or if the information about the unclaimed funds is so old as to be unreliable.

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE¹**

- 1 **Rule 8003. Appeal as of Right—How Taken;**
2 **Docketing the Appeal**
- 3 (a) FILING THE NOTICE OF APPEAL.
- 4 * * * * *
- 5 (3) *Contents.* The notice of appeal
6 must:
- 7 (A) conform substantially
8 to the appropriate Official Form;
- 9 (B) be accompanied by
10 the judgment,—or the appealable
11 order, or decree,—from which the
12 appeal is taken ~~or the part of it, being~~
13 appealed; and
- 14 (C) be accompanied by
15 the prescribed fee.

¹ New material is underlined; matter to be omitted is lined through.

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16 (4) Merger. The notice of appeal
17 encompasses all orders that, for purposes of
18 appeal, merge into the identified judgment or
19 appealable order or decree. It is not
20 necessary to identify those orders in the
21 notice of appeal.

22 (5) Final Judgment. The notice
23 of appeal encompasses the final judgment,
24 whether or not that judgment is set out in a
25 separate document under Rule 7058, if the
26 notice identifies:

27 (A) an order that
28 adjudicates all remaining claims and
29 the rights and liabilities of all
30 remaining parties; or

31 (B) an order described in
32 Rule 8002(b)(1).

33 (6) Limited Appeal. An appellant
34 may identify only part of a judgment or
35 appealable order or decree by expressly
36 stating that the notice of appeal is so limited.
37 Without such an express statement, specific
38 identifications do not limit the scope of the
39 notice of appeal.

40 (7) Impermissible Ground for
41 Dismissal. An appeal must not be dismissed
42 for failure to properly identify the judgment
43 or appealable order or decree if the notice of
44 appeal was filed after entry of the judgment
45 or appealable order or decree and identifies
46 an order that merged into that judgment or
47 appealable order or decree.

48 (4)-(8) Additional Copies. * * *

49 * * * * *

Committee Note

Subdivision (a) is amended to conform to recent amendments to Fed. R. App. P. 3(c), which clarified that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment or appealable order or decree. These amendments reflect that a notice of appeal is supposed to be a simple document that provides notice that a party is appealing and invokes the jurisdiction of the appellate court. It therefore must state who is appealing, what is being appealed, and to what court the appeal is being taken. It is the role of the briefs, not the notice of appeal, to focus the issues on appeal.

Subdivision (a)(3)(B) is amended in an effort to avoid the misconception that it is necessary or appropriate to identify each and every order of the bankruptcy court that the appellant may wish to challenge on appeal. It requires the attachment of “the judgment—or the appealable order or decree—from which the appeal is taken”—and the phrase “or the part of it” is deleted. In most cases, because of the merger principle, it is appropriate to identify and attach only the judgment or the appealable order or decree from which the appeal as of right is taken.

Subdivision (a)(4) now calls attention to the merger principle. The general merger rule can be stated simply: an appeal from a final judgment or appealable order or decree permits review of all rulings that led up to the judgment, order, or decree. Because this general rule is subject to some exceptions and complications, the amendment does not attempt to codify the merger principle but instead leaves its details to case law. The amendment does not change the principle established in *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202-03 (1988), that “a decision on the merits

is a 'final decision' . . . whether or not there remains for adjudication a request for attorney's fees attributable to the case."

Sometimes a party who is aggrieved by a final judgment will make a motion in the bankruptcy court instead of immediately filing a notice of appeal. Rule 8002(b)(1) permits a party who makes certain motions to await disposition of those motions before appealing. But some courts treat a notice of appeal that identifies only the order disposing of such a motion as limited to that order, rather than bringing the final judgment before the appellate court for review. To reduce the unintended loss of appellate rights in this situation, subdivision (a)(5) is added. This amendment does not alter the requirement of Rule 8002(b)(3) (requiring a notice of appeal or an amended notice of appeal if a party intends to challenge an order disposing of certain motions).

Subdivision (a)(6) is added to enable deliberate limitations of the notice of appeal. It allows an appellant to identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, however, specific identifications do not limit the scope of the notice of appeal.

On occasion, a party may file a notice of appeal after a judgment or appealable order or decree but identify only a previously nonappealable order that merged into that judgment or appealable order or decree. To deal with this situation, subdivision (a)(7) is added to provide that an appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into the

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judgment, order, or decree from which the appeal is taken. In this situation, a court should act as if the notice had properly identified the judgment or appealable order or decree. In determining whether a notice of appeal was filed after the entry of judgment, Rules 8002(a)(2) and (b)(2) apply.

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

1 **Rule 9006. Computing and Extending Time; Time for**
2 **Motion Papers**

3 (a) COMPUTING TIME. The following rules
4 apply in computing any time period specified in these rules,
5 in the Federal Rules of Civil Procedure, in any local rule or
6 court order, or in any statute that does not specify a method
7 of computing time.

8 * * * * *

9 (6) *“Legal Holiday” Defined.* “Legal
10 holiday” means:

11 (A) the day set aside by statute for
12 observing New Year’s Day, Martin Luther
13 King Jr.’s Birthday, Washington’s Birthday,
14 Memorial Day, Juneteenth National
15 Independence Day, Independence Day,

¹ New material is underlined.

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16 Labor Day, Columbus Day, Veterans' Day,
17 Thanksgiving Day, or Christmas Day;

18 (B) any day declared a holiday by
19 the President or Congress; and

20 (C) for periods that are measured
21 after an event, any other day declared a
22 holiday by the state where the district court is
23 located. (In this rule, "state" includes the
24 District of Columbia and any United States
25 commonwealth or territory.)

26 * * * * *

Committee Note

The amendment adds "Juneteenth National Independence Day" to the list of legal holidays. See Juneteenth National Independence Day Act, P.L. 117-17 (2021) (amending 5 U.S.C. § 6103(a)).

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

1 **Rule 9038. Bankruptcy Rules Emergency**

2 (a) CONDITIONS FOR AN EMERGENCY.

3 The Judicial Conference of the United States may declare a
4 Bankruptcy Rules emergency if it determines that
5 extraordinary circumstances relating to public health or
6 safety, or affecting physical or electronic access to a
7 bankruptcy court, substantially impair the court's ability to
8 perform its functions in compliance with these rules.

9 (b) DECLARING AN EMERGENCY.

10 (1) Content. The declaration must:

11 (A) designate the bankruptcy
12 court or courts affected;

13 (B) state any restrictions on the
14 authority granted in (c); and

¹ New material is underlined.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

15 (C) be limited to a stated period of
16 no more than 90 days.

17 (2) Early Termination. The Judicial
18 Conference may terminate a declaration for one or
19 more bankruptcy courts before the termination date.

20 (3) Additional Declarations. The
21 Judicial Conference may issue additional
22 declarations under this rule.

23 (c) TOLLING AND EXTENDING TIME

24 LIMITS.

25 (1) In an Entire District or Division.
26 When an emergency is in effect for a bankruptcy
27 court, the chief bankruptcy judge may, for all cases
28 and proceedings in the district or in a division:

29 (A) order the extension or tolling
30 of a Bankruptcy Rule, local rule, or order that
31 requires or allows a court, a clerk, a party in
32 interest, or the United States trustee, by a

33 specified deadline, to commence a
34 proceeding, file or send a document, hold or
35 conclude a hearing, or take any other action,
36 despite any other Bankruptcy Rule, local
37 rule, or order; or

38 (B) order that, when a Bankruptcy
39 Rule, local rule, or order requires that an
40 action be taken “promptly,” “forthwith,”
41 “immediately,” or “without delay,” it be
42 taken as soon as is practicable or by a date set
43 by the court in a specific case or proceeding.

44 (2) *In a Specific Case or Proceeding.*
45 When an emergency is in effect for a bankruptcy
46 court, a presiding judge may take the action
47 described in (1) in a specific case or proceeding.

48 (3) *When an Extension or Tolling Ends.*
49 A period extended or tolled under (1) or (2)
50 terminates on the later of:

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51 (A) the last day of the time period
52 as extended or tolled or 30 days after the
53 emergency declaration terminates, whichever
54 is earlier; or

55 (B) the last day of the time period
56 originally required, imposed, or allowed by
57 the relevant Bankruptcy Rule, local rule, or
58 order that was extended or tolled.

59 (4) *Further Extensions or Shortenings.*

60 A presiding judge may lengthen or shorten an
61 extension or tolling in a specific case or proceeding.

62 The judge may do so only for good cause after notice
63 and a hearing and only on the judge's own motion or
64 on motion of a party in interest or the United States
65 trustee.

66 (5) *Exception.* A time period imposed by
67 statute may not be extended or tolled.

Committee Note

The rule is new. It provides authority to extend or toll the time limits in these rules during times of major emergencies affecting the bankruptcy courts. The continuing operation of the bankruptcy courts during the COVID-19 pandemic showed that the existing rules are flexible enough to accommodate remote proceedings, service by mail, and electronic transmission of documents. Nevertheless, it appeared that greater flexibility than Rule 9006(b) provides might be needed to allow the extension of certain time periods in specific cases or any extension on a district-wide basis in response to an emergency.

Emergency rule provisions have also been added to the Civil, Criminal, and Appellate Rules. Along with the Bankruptcy Rule, these rules have been made as uniform as possible. But each set of rules serves distinctive purposes, shaped by different origins, traditions, functions, and needs. Different provisions were compelled by these different purposes.

Subdivision (a) specifies the limited circumstances under which the authority conferred by this rule may be exercised. The Judicial Conference of the United States has the exclusive authority to declare a Bankruptcy Rules emergency, and it may do so only under extraordinary circumstances. Those circumstances must relate to public health or safety or affect physical or electronic access to a bankruptcy court. And, importantly, the court's ability to operate in compliance with the Bankruptcy Rules must be substantially impaired.

Under subdivision (b)(1), a Bankruptcy Rules emergency declaration must specify the bankruptcy courts to which it applies because, instead of being nationwide, an emergency might be limited to one area of the country or even to a particular state. The declaration must also specify

a termination date that is no later than 90 days from the declaration's issuance. Under subdivisions (b)(2) and (b)(3), however, that time period may be extended by the issuance of additional declarations or reduced by early termination if circumstances change. The declaration must also specify any limitations placed on the authority granted in subdivision (c) to modify time periods.

Subdivisions (c)(1) and (c)(2) grant the authority, during declared Bankruptcy Rules emergencies, to extend or toll deadlines to the chief bankruptcy judge of a district on a district- or division-wide basis or to the presiding judge in specific cases. Unless limited by the emergency declaration, this authority extends to all time periods in the rules that are not also imposed by statute. It also applies to directives to take quick action, such as rule provisions that require action to be taken "promptly," "forthwith," "immediately," or "without delay."

Subdivision (c)(3), which addresses the termination of extensions and tolling, provides a "soft landing" upon the termination of a Bankruptcy Rules emergency. It looks to three possible dates for a time period to expire. An extended or tolled time period will terminate either 30 days after the rules-emergency declaration terminates or when the original time period would have expired, whichever is later—unless the extension or tolling itself expires sooner than 30 days after the declaration's termination. In that case, the extended expiration date will apply.

Subdivision (c)(4) allows fine tuning in individual cases of extensions of time or tollings that have been granted.

Subdivision (c)(5) excepts from the authority to extend time periods any time provision imposed by statute. The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, does not authorize the Bankruptcy Rules to supersede conflicting

laws. Accordingly, a time limit in a rule that is a restatement of a deadline imposed by statute or an incorporation by reference of such a deadline may not be extended under this rule. However, if a statute merely incorporates by reference a time period imposed by a rule, that period may be extended.

Excerpt from the September 2022 Report of the Committee on Rules of Practice and Procedure

* * * * *

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

* * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules and Forms Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules recommended for final approval the following proposals: * * * amendments to Bankruptcy Rules 3011, 8003, and 9006; new Bankruptcy Rule 9038; and * * *. The Advisory Committee also recommended all of the foregoing for transmission to the Judicial Conference * * *.

* * * * *

Rule 3011 (Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases)

The proposed amendment, which was suggested by the Committee on the Administration of the Bankruptcy System, redesignates the existing text of Rule 3011 as subdivision (a) and adds a new subdivision (b) requiring the clerk of court to provide searchable access on the court's website to information about funds deposited pursuant to § 347 of the Bankruptcy Code (Unclaimed Property). There was one comment on the proposed amendment, and the language of subdivision (b) was restyled and modified to reflect the comment. The Advisory Committee recommended final approval as amended.

<p style="text-align: center;">NOTICE NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.</p>
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Excerpt from the September 2022 Report of the Committee on Rules of Practice and ProcedureRule 8003 (Appeal as of Right – How Taken; Docketing the Appeal)

The proposed amendments to Rule 8003 conform to amendments recently made to Federal Rule of Appellate Procedure 3, which stress the simplicity of the Rule’s requirements for the contents of the notice of appeal and which disapprove some courts’ “expressio unius est exclusio alterius” approach to interpreting a notice of appeal. No comments were submitted, and the Advisory Committee gave its final approval to the rule as published.

Rule 9006 (Computing and Extending Time; Time for Motion Papers)

In response to the enactment of the Juneteenth Act, the Advisory Committee proposed a technical amendment to Rule 9006(a)(6)(A) to include Juneteenth National Independence Day in the list of legal public holidays in the rule. The Advisory Committee recommended final approval without publication because this is a technical and conforming amendment.

Rule 9038 (Bankruptcy Rules Emergency)

New Rule 9038 is part of the package of proposed emergency rules drafted in response to the CARES Act directive. Subdivisions (a) and (b) of the rule are similar to the Appellate, Civil, and Criminal Emergency Rules in the way they define a rules emergency, provide authority to the Judicial Conference to declare such an emergency, and prescribe the content and duration of a declaration.

Rule 9038(c) expands existing Bankruptcy Rule 9006(b), which authorizes an individual bankruptcy judge to enlarge time periods for cause. Although many courts relied on Rule 9006(b) to grant extensions of time during the COVID-19 pandemic, the rule does not fully meet the needs of an emergency situation. First, it has some exceptions—time limits that cannot be expanded. Also, it arguably does not authorize an extension order applicable to all cases in a district. Rule 9038 is intended to fill in these gaps for situations in which the Judicial Conference declares a rules emergency. The chief bankruptcy judge can grant a district-wide

Excerpt from the September 2022 Report of the Committee on Rules of Practice and Procedure

extension for any time periods specified in the rules, and individual judges can do the same in specific cases. There were no negative comments addressing Rule 9038, and the Advisory Committee recommended final approval as published.

* * * * *

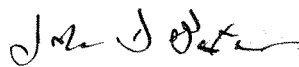
The Standing Committee unanimously approved the Advisory Committee's recommendations.

Recommendation: That the Judicial Conference:

- a. Approve the proposed amendments to Bankruptcy Rules 3011, 8003, and 9006, and proposed new Bankruptcy Rule 9038, as set forth in Appendix B, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law; and * * *

* * * * *

Respectfully submitted,



John D. Bates, Chair

Elizabeth J. Cabraser	Troy A. McKenzie
Jesse M. Furman	Patricia Ann Millett
Robert J. Giuffra, Jr.	Lisa O. Monaco
Frank Mays Hull	Gene E.K. Pratter
William J. Kayatta, Jr.	Kosta Stojilkovic
Peter D. Keisler	Jennifer G. Zipps
Carolyn B. Kuhl	

* * * * *

Excerpt from the May 10, 2022 Report of the Advisory Committee on Bankruptcy Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

JOHN D. BATES
CHAIR

CHAIRS OF ADVISORY COMMITTEES

JAY S. BYBEE
APPELLATE RULES

DENNIS R. DOW
BANKRUPTCY RULES

ROBERT M. DOW, JR.
CIVIL RULES

RAYMOND M. KETHLEDGE
CRIMINAL RULES

PATRICK J. SCHILTZ
EVIDENCE RULES

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Dennis R. Dow, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 10, 2022

I. Introduction

The Advisory Committee on Bankruptcy Rules met by videoconference on March 31, 2022. The draft minutes of that meeting are attached.

At the meeting, the Advisory Committee gave its final approval to rule and form amendments that were published for comment last August. They consist of (1) new Rule 9038 (Bankruptcy Rules Emergency); * * *; (3) amendments to Rule 3011 (Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases); (4) amendments to Rule 8003 (Appeal as of Right – How Taken; Docketing the Appeal); * * *.

Excerpt from the May 10, 2022 Report of the Advisory Committee on Bankruptcy Rules

Part II of this report presents those action items, other than Rule 9038. A discussion of Rule 9038, which is proposed for final approval, is included elsewhere in the agenda book, along with the other emergency rules and a memorandum from Professors Capra and Struve. Part II also includes a request for final approval without publication of an amendment to Rule 9006(a)(6)(A) to add Juneteenth as a legal holiday. The Advisory Committee approved that amendment at its fall 2021 meeting.

Part II is organized as follows:

A. Items for Final Approval

- (1) Rules and forms published for comment in August 2021—
 - * * *
 - Rule 3011;
 - Rule 8003;
 - * * *
- (2) An amendment to Rule 9006(a)(6)(A) approved by the Advisory Committee without publication.

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II. Action Items from the Fall and Spring Meetings

A. Items for Final Approval

(1) **The Advisory Committee recommends that the Standing Committee approve the proposed rule and form amendments that were published for public comment in August 2021 and are discussed below.** Bankruptcy Appendix A includes the rules and form that are in this group.

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Action Item 2. Rule 3011 (Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases). The proposed amendment, which was suggested by the Committee on the Administration of the Bankruptcy System, redesignates the existing text of Rule 3011 as subdivision (a) and adds a new subdivision (b) that requires the clerk of court to provide searchable access on the court's website to data about funds deposited pursuant to § 347 of the Bankruptcy Code (Unclaimed Property). There was one comment on the proposed amendment, and the language of subdivision (b) was restyled and modified to reflect the comment.

Action Item 3. Rule 8003 (Appeal as of Right – How Taken; Docketing the Appeal). Amendments to Rule 8003 were proposed to conform to amendments recently made to FRAP 3, which clarified that the designation of a particular interlocutory order in a notice of appeal does

Excerpt from the May 10, 2022 Report of the Advisory Committee on Bankruptcy Rules

not prevent the appellate court from reviewing all orders that merged into the judgment or appealable order or decree.

Rule 8003(a)(3)(B) is amended to avoid the misconception that it is necessary or appropriate to identify each order of the bankruptcy court that the appellant may wish to challenge on appeal. It merely requires the attachment of “the judgment—or the appealable order or decree—from which the appeal is taken,” and the phrase “or part thereof” is deleted. Subdivision (a)(4) now calls attention to the merger principle without attempting to codify the principle. It states in part that the notice of appeal “encompasses all orders that, for purposes of appeal, merge into the identified judgment or appealable order or decree.” Subdivision (a)(5) is added to make clear that the notice of appeal encompasses the final judgment if the notice identifies either an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties or a post-judgment order described in Rule 8002(b)(1). Subdivision (a)(6) is added to enable deliberate limitations of the notice of appeal. Subdivision (a)(7) is added to provide that an appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into the judgment, order, or decree from which the appeal is taken.

No comments were submitted on the proposed amendments, and the Advisory Committee give its final approval to the rule as published.

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(2) **Action Item 7.** The Advisory Committee recommends that the Standing Committee approve without publication an amendment to Rule 9006(a)(6)(A), which is included in Bankruptcy Appendix A. In response to the enactment of the Juneteenth National Independence Day Act, P.L. 117-17 (2021), the Advisory Committee approved an amendment to Rule 9006(a)(6)(A) to insert the words “Juneteenth National Independence Day” immediately following the words “Memorial Day.”

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May 5, 2022 Report of the Advisory Committee on Bankruptcy Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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CHAIR

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CRIMINAL RULES

PATRICK J. SCHILTZ
EVIDENCE RULES

MEMORANDUM

TO: Honorable John D. Bates, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Dennis R. Dow, Chair
Advisory Committee on Bankruptcy Rules

RE: Bankruptcy Rule 9038 (Bankruptcy Rules Emergency)

DATE: May 5, 2022

At the Advisory Committee's spring meeting, members unanimously approved, as published, new Rule 9038, which would allow extensions of time limits in the Bankruptcy Rules to be granted if the Judicial Conference declared a bankruptcy rules emergency. As Professors Struve and Capra explain, subdivisions (a) and (b) of the rule are similar to the Civil and Criminal Emergency Rules in the way they define a rules emergency, provide authority to the Judicial Conference to declare such an emergency, and prescribe the content and duration of a declaration.

Rule 9038(c) is basically an expansion of existing Bankruptcy Rule 9006(b), which authorizes an individual bankruptcy judge to enlarge time periods for cause. During the COVID pandemic, many courts relied on this provision to grant extensions of time. The existing rule, however, does not fully meet the needs of an emergency situation. First, it has some exceptions—time limits that cannot be expanded. One of these is the time limit for holding meetings of creditors, a limitation that either caused problems for courts during the current

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emergency or was honored in the breach. Also, it probably does not authorize an extension order applicable to all cases in a district. Rule 9038 is intended to fill in these gaps for situations in which the Judicial Conference declares a rules emergency. The chief bankruptcy judge can grant a district-wide extension for any time periods specified in the rules, and individual judges can do the same in specific cases.

Only one comment was submitted concerning Rule 9038. The Federal Bar Association submitted a comment (BK-2021-0002-0019) addressing all of the proposed emergency rules. It stated that it “supports each of the revised and new rules developed by the Appellate, Bankruptcy, Civil, and Criminal Rules Committees in response to the rulemaking directive in Section 15002(b)(6) of the CARES Act.” It noted in particular that “the judiciary is best suited to declare an emergency concerning court rules of practice and procedure” and that it “agrees that the Judicial Conference exclusively, rather than specific circuits, districts, or judges, should be permitted to declare a rules emergency.” The Association also commended the “success in achieving relative uniformity across all four emergency rules.”

The Advisory Committee recommends that the Standing Committee give final approval to Rule 9038 as published.