

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

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
8 and serve on the debtor, debtor's counsel, and the
9 trustee a notice of any change in the payment amount,
10 including any change that results from an interest_rate
11 or escrow_account adjustment, no later than 21 days
12 before a payment in the new amount is due. If the
13 claim arises from a home-equity line of credit, this
14 requirement may be modified by court order.

¹ 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

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change was valid will require 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.

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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,~~
9 ~~or verified by electronic means that are~~
10 ~~consistent with technical standards, if any, that~~
11 ~~the Judicial Conference of the United States~~
12 ~~establishes. A local rule may require filing by~~
13 ~~electronic means only if reasonable exceptions~~
14 ~~are allowed. An entity represented by an~~
15 ~~attorney shall file electronically, unless~~
16 ~~nonelectronic filing is allowed by the court for~~

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17 good cause or is allowed or required by local
18 rule.

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

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

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

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

33 (D) Same as a Written Paper. A paper
34 document filed electronically by ~~electronic means~~
35 ~~in compliance with a local rule constitutes~~ is a
36 written paper for ~~the purposes~~ of applying these
37 rules, the Federal Rules of Civil Procedure made
38 applicable by these rules, and § 107 of the Code.

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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

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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 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),
5 Rule 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
8 by any person at least 18 years of age who is not a
9 party, and the summons may be delivered by the clerk
10 to any such person.

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Committee Note

In 1996, Rule 7004(a) was amended to incorporate by reference Rule 4(d)(1) of the Federal Rules of Civil Procedure. 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**
2 **Judgment**

3 Rule 62 F.R.Civ.P. applies in adversary proceedings,
4 except that proceedings to enforce a judgment are stayed
5 for 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
6 entered 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

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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,
26 or 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
32 time to file an appeal runs for all parties from the
33 entry of the order disposing of the last such remaining
34 motion:

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* * * * *

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(c) APPEAL BY AN INMATE CONFINED IN AN

37

INSTITUTION.

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(1) *In General.* If an institution has a system

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designed for legal mail, an inmate confined there must

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use that system to receive the benefit of this

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Rule 8002(c)(1). If an inmate ~~confined in an~~

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~~institution~~ files a notice of appeal from a judgment,

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order, or decree of a bankruptcy court, the notice is

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timely if it is deposited in the institution's internal

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mail system on or before the last day for filing. ~~If the~~

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~~institution has a system designed for legal mail, the~~

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~~inmate must use that system to receive the benefit of~~

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~~this rule. Timely filing may be shown by a~~

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~~declaration in compliance with 28 U.S.C. § 1746 or by~~

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~~a notarized statement, either of which must set forth~~

51 ~~the date of deposit and state that first class postage~~
52 ~~has been prepaid, and:~~

53 (A) it is accompanied by:

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

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

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

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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.

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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
8 of 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.

14 The district court, BAP, or court of appeals may condition
15 relief 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
23 the 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
4 IN THE DISTRICT COURT, BAP, OR COURT OF
5 APPEALS. This subdivision (c) applies if, before the
6 record is transmitted, a party moves in the district court,
7 BAP, or 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
18 parts 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),
12 filing 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
20 is 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
26 3 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

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

55 • the appellate court exercises
56 its discretion to permit the later filing
57 of a declaration or notarized statement
58 that satisfies this
59 Rule 8011(a)(2)(A)(iii).

60 (B) *Electronic Filing.*

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

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

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

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

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

80 ~~(D)~~(C) *Copies.* If a document is filed
81 electronically, no paper copy is required. If a
82 document is filed by mail or delivery to the
83 district court or BAP, no additional copies are

84 required. But the district court or BAP may
85 require by local rule or by order in a particular
86 case the filing or furnishing of a specified
87 number of paper copies.

88 * * * * *

89 (c) MANNER OF SERVICE.

90 (1) Nonelectronic Service. Methods. ~~Service~~
91 ~~must be made electronically, unless it is being made~~
92 ~~by or on an individual who is not represented by~~
93 ~~counsel or the court's governing rules permit or~~
94 ~~require service by mail or other means of delivery.~~
95 Service Nonelectronic service may be ~~made by or on~~
96 ~~an unrepresented party~~ by any of the following
97 ~~methods:~~

98 (A) personal delivery;

99 (B) mail; or

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

102 (2) *Electronic Service.* Electronic service may
103 be made by sending a document to a registered user
104 by filing it with the court's electronic-filing system or
105 by using other electronic means that the person served
106 consented to in writing.

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

114 (d) PROOF OF SERVICE.

115 (1) *What ~~is~~ Required.* A document presented
116 for filing must contain either of the following if it was

117 served other than through the court's electronic-filing
118 system:

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

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

124 (i) the date and manner of service;

125 (ii) the names of the persons served;

126 and

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

131 * * * * *

132 (e) SIGNATURE. Every document filed
133 electronically must include the electronic signature of the

134 person filing it or, if the person is represented, the
135 electronic signature of counsel. ~~The electronic signature~~
136 ~~must be provided by electronic means that are consistent~~
137 ~~with any technical standards that the Judicial Conference of~~
138 ~~the United States establishes.~~ A filing made through a
139 person's electronic-filing account and authorized by that
140 person, together with that person's name on a signature
141 block, constitutes the person's signature. Every document
142 filed in paper form must be signed by the person filing the
143 document 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
9 a paper version regarding covers, line spacing,
10 margins, typeface, and type style. It must also comply
11 with the pagelength limits under paragraph (3).

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

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17 (A) a motion or a response to a motion
18 ~~must not exceed 20 pages, exclusive of the~~
19 ~~corporate disclosure statement and~~
20 ~~accompanying documents authorized by~~
21 ~~subdivision (a)(2)(C) produced using a computer~~
22 must include a certificate under Rule 8015(h)
23 and not exceed 5,200 words; and

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

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

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

33 * * * * *

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 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 limitation.*

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

16 • ~~it~~ contains no more than
17 ~~14,000~~ 13,000 words; or

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

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

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

52

* * * * *

53

(f) LOCAL VARIATION. A district court or BAP

54

must accept documents that comply with the ~~applicable~~

55

form requirements of this rule and the length limits set by

56

Part VIII of these rules. By local rule or order in a

57

particular case, a district court or BAP may accept

58

documents that do not meet all of the form requirements of

59

this rule or the length limits set by Part VIII of these rules.

60

(g) ITEMS EXCLUDED FROM LENGTH. In

61

computing any length limit, headings, footnotes, and

62

quotations count toward the limit, but the following items

63

do not:

64

• the cover page;

65

• a corporate disclosure statement;

66

• a table of contents;

67

• a table of citations;

68

• a statement regarding oral argument;

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

76 (h) CERTIFICATE OF COMPLIANCE.

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

86 processing system used to prepare the document. The
 87 certificate must state the number of words—or the
 88 number of lines of monospaced type—in the
 89 document.

90 (2) *Acceptable Form.* The certificate
 91 requirement is satisfied by a certificate of compliance
 92 that conforms substantially to the appropriate Official
 93 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,
9 15 pages.

10 (2) *Type-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)
14 and:

15 (i) ~~it contains no more than 14,000~~
16 13,000 words; or

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

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

22 (i) ~~it~~ contains no more than ~~16,500~~
23 15,300 words; or

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

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

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

34 ~~argument, any addendum containing statutes,~~
35 ~~rules, or regulations, and any certificates of~~
36 ~~counsel do not count toward the limitation.~~

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

40 * * * * *

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

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situations by granting leave to exceed the type-volume limitations as appropriate.

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
10 court. Any other amicus curiae may file a brief only
11 by leave of court or if the brief states that all parties
12 have consented to its filing, but a district court or BAP
13 may prohibit the filing of or may strike an amicus
14 brief that would result in a judge's disqualification.

15 On its own motion, and with notice to all parties to an
16 appeal, the district court or BAP may request a brief
17 by an amicus curiae.

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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 ~~(e)~~(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
27 the 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
32 Rule 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
40 identity of the amicus curiae, its interest in the
41 case, and 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
63 more than one-half the maximum length authorized by
64 these rules for a party's principal brief. If the court
65 grants a party permission to file a longer brief, that
66 extension does not affect the length of an amicus
67 brief.

68 ~~(e)~~(6) *Time for Filing.* An amicus curiae
69 must file its brief, accompanied by a motion for filing
70 when necessary, no later than 7 days after the
71 principal brief of the party being supported is filed.
72 An amicus curiae that does not support either party
73 must file its brief no later than 7 days after the
74 appellant’s principal brief is filed. The district court
75 or BAP may grant leave for later filing, specifying the
76 time within which an opposing party may answer.

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

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

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

85 (1) Applicability. This Rule 8017(b) governs
86 amicus filings during a district court's or BAP's
87 consideration of whether to grant rehearing, unless a
88 local rule or order in a case provides otherwise.

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

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

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

100 (5) Time for Filing. An amicus curiae
101 supporting the motion for rehearing or supporting

102 neither party must file its brief, accompanied by a
103 motion for filing when necessary, no later than 7 days
104 after the motion is filed. An amicus curiae opposing
105 the motion for rehearing must file its brief,
106 accompanied by a motion for filing when necessary,
107 no 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
6 of 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 Insurance 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
6 party 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
15 appeal; 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 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 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
8 district court's or BAP's permission:

9 (1) a motion for rehearing produced using a
10 computer must include a certificate under
11 Rule 8015(h) 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
4 ~~the 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~~
6 ~~other undertaking~~ with one or more ~~sureties~~ security
7 providers, each ~~surety~~ provider submits to the jurisdiction of
8 the court, and liability may be determined in an adversary
9 proceeding 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.