

117th Congress, 1st Session - - - - - House Document 117-31

AMENDMENTS TO THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE

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COMMUNICATION

FROM

CHIEF JUSTICE, SUPREME COURT OF THE  
UNITED STATES

TRANSMITTING

AMENDMENTS 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 28, 2021.—Referred to the Committee on the Judiciary and ordered  
to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE

19-011

WASHINGTON : 2021



SUPREME COURT OF THE UNITED STATES,  
*Washington, DC, April 14, 2021.*

Hon. NANCY PELOSI,  
*Speaker of the House of Representatives,*  
*Washington, DC.*

DEAR MADAM SPEAKER: I have the honor to submit to the Congress the amendments 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 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 20, 2020; a redline version of the rules with committee notes; an excerpt from the September 2020 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 2020 report of the Advisory Committee on Bankruptcy Rules.

Sincerely,

JOHN G. ROBERTS, JR.



April 14, 2021

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. The Federal Rules of Bankruptcy Procedure are amended to include amendments to Rules 2005, 3007, 7007.1, and 9036.

[*See infra* pp. \_\_ \_\_ \_\_.]

2. The foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2021, 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 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 2005. Apprehension and Removal of Debtor to  
Compel Attendance for Examination**

\* \* \* \* \*

(c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the relevant provisions and policies of title 18 U.S.C. § 3142.

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**Rule 3007. Objections to Claims**

(a) TIME AND MANNER OF SERVICE.

\* \* \* \* \*

(2) *Manner of Service.*

(A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and

\* \* \* \* \*

(ii) if the objection is to a claim of an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, in the manner provided in Rule 7004(h).

\* \* \* \* \*

**Rule 7007.1. Corporate Ownership Statement**

(a) REQUIRED DISCLOSURE. Any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, shall file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.

(b) TIME FOR FILING; SUPPLEMENTAL FILING. The corporate ownership statement shall:

(1) be filed with the corporation's first appearance, pleading, motion, response, or other request addressed to the court; and

(2) be supplemented whenever the information required by this rule changes.



## 4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

**Rule 9036. Notice and Service by Electronic Transmission**

(a) **IN GENERAL.** This rule applies whenever these rules require or permit sending a notice or serving a paper by mail or other means.

(b) **NOTICES FROM AND SERVICE BY THE COURT.**

(1) *Registered Users.* The clerk may send notice to or serve a registered user by filing the notice or paper with the court's electronic-filing system.

(2) *All Recipients.* For any recipient, the clerk may send notice or serve a paper by electronic means that the recipient consented to in writing, including by designating an electronic address for receipt of notices. But these exceptions apply:

(A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing

program, the clerk shall send the notice to or serve the paper at that address; and

(B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the paper electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f) of the Code.

(c) NOTICES FROM AND SERVICE BY AN ENTITY. An entity may send notice or serve a paper in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B).

(d) COMPLETING NOTICE OR SERVICE. Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. It is the

## 6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

recipient's responsibility to keep its electronic address current with the clerk.

(e) INAPPLICABILITY. This rule does not apply to any paper required to be served in accordance with Rule 7004.





THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

## JUDICIAL CONFERENCE OF THE UNITED STATES

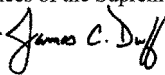
WASHINGTON, D.C. 20544

JAMES C. DUFF  
*Secretary*

October 20, 2020

### MEMORANDUM

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

From: James C. Duff 

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 herewith for consideration of the Court proposed amendments to Rules 2005, 3007, 7007.1, and 9036 of the Federal Rules of Bankruptcy Procedure, which were approved by the Judicial Conference at its September 2020 session. The Judicial Conference recommends that the amendments be adopted by the Court and transmitted to Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting: (i) a copy of the affected rules incorporating the proposed amendments and accompanying committee notes; (ii) a blackline version of the same; (iii) an excerpt from the September 2020 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the May 2020 Report of the Advisory Committee on Bankruptcy Rules.

Attachments

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

1    **Rule 2005.    Apprehension and Removal of Debtor to**  
2                                **Compel Attendance for Examination**

3    \* \* \* \* \*

4                    (c) CONDITIONS OF RELEASE. In determining  
5    what conditions will reasonably assure attendance or  
6    obedience under subdivision (a) of this rule or appearance  
7    under subdivision (b) of this rule, the court shall be governed  
8    by the relevant provisions and policies of title 18, U.S.C.,  
9    ~~§ 3146(a) and (b)~~ § 3142.

**Committee Note**

The rule is amended to replace the reference to 18 U.S.C. § 3146(a) and (b) with a reference to 18 U.S.C. § 3142. Sections 3141 through 3151 of Title 18 were repealed by the Bail Reform Act of 1984, Pub. L. No. 98-473, Title II, § 203(a), 98 Stat. 1976 (1984), and replaced by new provisions dealing with bail. The current version of 18 U.S.C. § 3146 deals not with conditions to assure attendance or appearance, but with penalties for failure to appear. The topic of conditions is in 18 U.S.C. § 3142. Because 18 U.S.C. § 3142 contains provisions bearing on

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

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topics not included in former 18 U.S.C. § 3146(a) and (b), the rule is also amended to limit the reference to the “relevant” provisions and policies of § 3142.

1   **Rule 3007. Objections to Claims**

2           (a) TIME AND MANNER OF SERVICE

3                               \* \* \* \* \*

4                               (2) *Manner of Service.*

5                               (A) The objection and notice shall be served  
6                               on a claimant by first-class mail to the person  
7                               most recently designated on the claimant's  
8                               original or amended proof of claim as the  
9                               person to receive notices, at the address so  
10                              indicated; and

11                             \* \* \* \* \*

12                             (ii) if the objection is to a claim of an  
13                             insured depository institution as  
14                             defined in section 3 of the Federal  
15                             Deposit Insurance Act, in the manner  
16                             provided in Rule 7004(h).

17                             \* \* \* \* \*



## 4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

**Committee Note**

Subdivision (a)(2)(A)(ii) is amended to clarify that the special service method required by Rule 7004(h) must be used for service of objections to claims only on insured depository institutions as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813. Rule 7004(h) was enacted by Congress as part of the Bankruptcy Reform Act of 1994. It applies only to insured depository institutions that are insured by the Federal Deposit Insurance Corporation and does not include credit unions, which are instead insured by the National Credit Union Administration. A credit union, therefore, may be served with an objection to a claim according to Rule 3007(a)(2)(A)—by first-class mail sent to the person designated for receipt of notice on the credit union's proof of claim.

1     **Rule 7007.1. Corporate Ownership Statement**

2           (a)     REQUIRED     DISCLOSURE.     Any  
3     nongovernmental corporation that is a party to an adversary  
4     proceeding, other than the debtor, ~~or a governmental unit,~~  
5     shall file ~~two copies of~~ a statement that identifies any parent  
6     corporation and any publicly held corporation, other than a  
7     governmental unit, that directly or indirectly that owns 10%  
8     or more of ~~any class of the corporation's equity interests, its~~  
9     stock or states that there ~~are no entities to report under this~~  
10    ~~subdivision~~ is no such corporation. The same requirement  
11    applies to a nongovernmental corporation that seeks to  
12    intervene.

13           (b)     TIME FOR FILING; SUPPLEMENTAL  
14    FILING. ~~A party shall file the~~ The corporate ownership  
15    statement ~~shall; required under Rule 7007.1(a)~~

16                   (1) be filed with ~~its~~ the corporation's first  
17                   appearance, pleading, motion, response, or other  
18                   request addressed to the court; and

## 6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

19                   (2) be supplemented whenever the  
20                   information required by this rule changes A  
21                   ~~party shall file a supplemental statement~~  
22                   ~~promptly upon any change in circumstances~~  
23                   ~~that this rule requires the party to identify or~~  
24                   ~~disclose.~~

**Committee Note**

The rule is amended to conform to recent amendments to Fed. R. Bankr. P. 8012 and Fed. R. App. P. 26.1, and the anticipated amendment to Fed. R. Civ. P. 7.1. Subdivision (a) is amended to encompass nongovernmental corporations that seek to intervene. Stylistic changes are made to subdivision (b) to reflect that some statements will be filed by nonparties seeking to intervene.

1 **Rule 9036. Notice and Service ~~Generally~~ by**  
2 **Electronic Transmission**

3 (a) IN GENERAL. This rule applies ~~W~~whenever  
4 these rules require or permit sending a notice or serving a  
5 paper by mail or other means, ~~the clerk, or some other~~  
6 ~~person as the court or these rules may direct, may send the~~  
7 ~~notice to — or serve the paper on —~~

8 (b) NOTICES FROM AND SERVICE BY THE  
9 COURT.

10 (1) Registered Users. The clerk may send  
11 notice to or serve a registered user by filing the notice  
12 or paper it with the court's electronic-filing system.

13 (2) All Recipients. For any recipient, the  
14 clerk may send notice or serve a paper ~~Or it may be sent~~  
15 ~~to any person by other~~ electronic means that the person  
16 recipient consented to in writing, including by  
17 designating an electronic address for receipt of notices.

18 But these exceptions apply:

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19           (A) if the recipient has registered an  
20           electronic address with the Administrative Office  
21           of the United States Courts' bankruptcy-noticing  
22           program, the clerk shall send the notice to or serve  
23           the paper at that address; and

24           (B) if an entity has been designated by the  
25           Director of the Administrative Office of the  
26           United States Courts as a high-volume paper-  
27           notice recipient, the clerk may send the notice to  
28           or serve the paper electronically at an address  
29           designated by the Director, unless the entity has  
30           designated an address under § 342(e) or (f) of the  
31           Code.

32           (c) NOTICES FROM AND SERVICE BY AN  
33           ENTITY. An entity may send notice or serve a paper in the  
34           same manner that the clerk does under (b), excluding  
35           (b)(2)(A) and (B).

36            (d) COMPLETING NOTICE OR SERVICE. ~~In~~  
37       ~~either of these events, Electronic service or notice or service~~  
38       is complete upon filing or sending but is not effective if the  
39       filer or sender receives notice that it did not reach the person  
40       to be served. It is the recipient's responsibility to keep its  
41       electronic address current with the clerk.

42            (e) INAPPLICABILITY. This rule does not apply  
43       to any ~~pleading or other~~ paper required to be served in  
44       accordance with Rule 7004.

#### Committee Note

The rule is amended to take account of the Administrative Office of the United States Courts' program for providing notice to high-volume paper-notice recipients. Under this program, when the Bankruptcy Noticing Center (BNC) has sent by mail more than a designated number of notices in a calendar month (initially set at 100) from bankruptcy courts to an entity, the Director of the Administrative Office will notify the entity that it is a high-volume paper-notice recipient. As such, this "threshold notice" will inform the entity that it must register an electronic address with the BNC. If, within a time specified in the threshold notice, a notified entity enrolls in Electronic Bankruptcy Noticing with the BNC, it will be sent notices electronically at the address maintained by the BNC upon a start date determined by the Director. If a notified entity does not timely enroll in Electronic Bankruptcy Noticing, it will

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be informed that court-generated notices will be sent to an electronic address designated by the Director. Any designation by the Director, however, is subject to the entity's right under § 342(e) and (f) of the Code to designate an address at which it wishes to receive notices in chapter 7 and chapter 13 cases, including at its own electronic address that it registers with the BNC.

The rule is also reorganized to separate methods of electronic noticing and service available to courts from those available to parties. Both courts and parties may serve or provide notice to registered users of the court's electronic-filing system by filing documents with that system. Both courts and parties also may serve and provide notice to any entity by electronic means consented to in writing by the recipient. Only courts may serve or give notice to an entity at an electronic address registered with the BNC as part of the Electronic Bankruptcy Noticing program.

The title of the rule is revised to more accurately reflect the rule's applicability to methods of electronic noticing and service. Rule 9036 does not preclude noticing and service by physical means otherwise authorized by the court or these rules.

Excerpt from the September 2020 Report of the Committee on Rules of Practice and Procedure

Agenda E-19  
Rules  
September 2020

# **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 Recommended for Approval and Transmission***

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 2005, 3007, 7007.1, and 9036. The amendments were published for public comment in August 2019.

#### **Rule 2005 (Apprehension and Removal of Debtor to Compel Attendance for Examination)**

The proposed amendment to Rule 2005(c) replaces the current reference to “the provisions and policies of title 18, U.S.C., § 3146(a) and (b)” – sections that have been repealed – with a reference to “the relevant provisions and policies of title 18 U.S.C. § 3142” – the section that now deals with the topic of conditions of release. The only comment addressing the proposal supported it. Accordingly, the Advisory Committee unanimously approved the amendment as published.

#### **Rule 3007 (Objections to Claims)**

The proposed amendment to Rule 3007(a)(2)(A)(ii) clarifies that the special service method required by Rule 7004(h) must be used for service of objections to claims only on insured depository institutions as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813. The clarification addresses a possible reading of the rule that would extend



**Excerpt from the September 2020 Report of the Committee on Rules of Practice and Procedure**

such special service not just to banks, but to credit unions as well. The only relevant comment supported the proposed amendment and the Advisory Committee recommended final approval of the rule as published.

**Rule 7007.1 (Corporate Ownership Statement)**

The proposed amendment extends Rule 7007.1(a)'s corporate-disclosure requirement to would-be intervenors. The proposed amendment also makes conforming and stylistic changes to Rule 7007.1(b). The changes parallel the recent amendment to Appellate Rule 26.1 (effective December 1, 2019), and the proposed amendments to Bankruptcy Rule 8012 (adopted by the Supreme Court and transmitted to Congress on April 27, 2020) and Civil Rule 7.1 (published for public comment in August 2019).

The Advisory Committee made one change in response to the comments. It agreed to retain the terminology "corporate ownership statement" because "disclosure statement" is a bankruptcy term of art with a different meaning. With that change, it recommended final approval of the rule.

**Rule 9036 (Notice and Service Generally)**

The proposed amendment to Rule 9036 would encourage the use of electronic noticing and service in several ways. The proposed amendment recognizes a court's authority to provide notice or make service through the Bankruptcy Noticing Center ("BNC") to entities that currently receive a high volume of paper notices from the bankruptcy courts. The proposed amendment also reorganizes Rule 9036 to separate methods of electronic noticing and service available to courts from those available to parties. Under the amended rule, both courts and parties may serve or provide notice to registered users of the court's electronic-filing system by filing documents with that system. Both courts and parties also may serve and provide notice to

**Excerpt from the September 2020 Report of the Committee on Rules of Practice and Procedure**

any entity by electronic means consented to in writing by the recipient. But only courts may serve or give notice to an entity at an electronic address registered with the BNC as part of the Electronic Bankruptcy Noticing program.

The proposed amendment differs from the version previously published for comment. The published version was premised in part on proposed amendments to Rule 2002(g) and Official Form 410. As discussed below, the Advisory Committee decided not to proceed with the proposed amendments to Rule 2002(g) and Official Form 410.

The Advisory Committee received seven comments regarding the proposed amendments, mostly from court clerks or their staff. In general, the comments expressed great support for the program to encourage high-volume paper-notice recipients to register for electronic bankruptcy noticing. But commenters opposed several other aspects of the proposed amendment. The concerns fell into three categories: clerk monitoring of email bounce-backs; administrative burden of a proof-of-claim opt-in for email noticing and service; and the interplay of the proposed amendments to Rules 2002(g) and 9036.

The Advisory Committee addressed concerns about clerk monitoring of email bounce-backs by adding a sentence to Rule 9036(d): “It is the recipient’s responsibility to keep its electronic address current with the clerk.”

The Advisory Committee was persuaded by clerk office concerns that the administrative burden of a proof-of-claim opt-in outweighed any benefits, and therefore decided not to go forward with the earlier proposed amendments to Rule 2002(g) and Official Form 410 and removed references to that option that were in the published version of Rule 9036. This decision also eliminated the concerns raised in the comments about the interplay between the proposed

**Excerpt from the September 2020 Report of the Committee on Rules of Practice and Procedure**

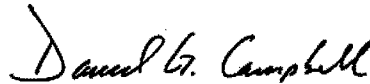
amendments to Rules 2002(g) and 9036. With those changes, the Advisory Committee recommended final approval of Rule 9036.

The Standing Committee unanimously approved the Advisory Committee's recommendation that the proposed amendments to Rules 2005, 3007, 7007.1, and 9036 be approved and transmitted to the Judicial Conference

**Recommendation:** That the Judicial Conference approve the proposed amendments to Bankruptcy Rules 2005, 3007, 7007.1, and 9036 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.

\* \* \* \* \*

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	Carolyn B. Kuhl
Daniel C. Girard	Patricia A. Millett
Robert J. Giuffra Jr.	Gene E.K. Pratter
Frank M. Hull	Jeffrey A. Rosen
William J. Kayatta Jr.	Kosta Stojilkovic
Peter D. Keisler	Jennifer G. Zipps

Excerpt from the May 18, 2020 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

DAVID G. CAMPBELL  
CHAIR  
  
REBECCA A. WOMELDORF  
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

MICHAEL A. CHAGARES  
APPELLATE RULES

DENNIS R. DOW  
BANKRUPTCY RULES

JOHN D. BATES  
CIVIL RULES

RAYMOND M. KETHLEDGE  
CRIMINAL RULES

DEBRA A. LIVINGSTON  
EVIDENCE RULES

MEMORANDUM

**TO:** Honorable David G. Campbell, Chair  
Standing Committee on Rules of Practice and Procedure

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

**DATE:** May 18, 2020

**RE:** Report of the Advisory Committee on Bankruptcy Rules

**I. Introduction**

The Advisory Committee on Bankruptcy Rules met virtually via WebEx on April 2, 2020. The draft minutes of that meeting are attached.

At the meeting, the Advisory Committee gave its final approval to amendments to four rules that were published for comment last August. The amendments are to Rules 2005 (Apprehension and Removal of Debtor to Compel Attendance for Examination), 3007 (Objections to Claims), 7007.1 (Corporate Ownership Statement), and 9036 (Notice and Service Generally).

\* \* \* \* \*

The action items are organized as follows:

**Excerpt from the May 18, 2020 Report of the Advisory Committee on Bankruptcy Rules**

A. Items for Final Approval

(A1) Rules published for comment in August 2019—

- Rule 2005;
- Rule 3007;
- Rule 7007.1; and
- Rule 9036.

\* \* \* \* \*

II. Action Items

A. Items for Final Approval

*(A1) Rules published for comment in August 2019.*

The Advisory Committee recommends that the Standing Committee approve and transmit to the Judicial Conference the proposed rule amendments that were published for public comment in August 2019 and are discussed below. Bankruptcy Appendix A includes the rules that are in this group.

**Action Item 1. Rule 2005 (Apprehension and Removal of Debtor to Compel Attendance for Examination).** The proposed amendment to Rule 2005(c) replaces the current reference to “the provisions and policies of 18 U.S.C. § 3146(a) and (b)” —sections that have been repealed—with a reference to “the relevant provisions and policies of 18 U.S.C. § 3142”—the section that now deals with the topic of conditions of release. The only mention of the proposed change in the comments received in response to publication was a supportive statement from the National Conference of Bankruptcy Judges (“NCBJ”). Accordingly, the Advisory Committee unanimously approved the amendment as published.

**Action Item 2. Rule 3007 (Objections to Claims).** Rule 3007(a)(2)(A)(ii) requires service of an objection to a claim “on an insured depository institution[] in the manner provided by Rule 7004(h).” Some bankruptcy judges have questioned whether “insured depository institution” under Rule 7004(h) includes credit unions as well as banks, a question that the Advisory Committee previously decided in the negative, and whether the meaning of “insured depository institution” is the same under Rule 3007(a)(2)(A)(ii) as under Rule 7004(h)

Rule 7004 governs service of a summons and complaint in adversary proceedings, and Rule 9014(b) makes Rule 7004 applicable to service of a motion initiating a contested matter. Rule 7004(b) provides generally for service by first class mail, in addition to the methods of service specified by Civil Rule 4(e)-(j). Rule 7004(b), however, is made subject to an exception set out in subdivision (h). The latter provision states:

(h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary

**Excerpt from the May 18, 2020 Report of the Advisory Committee on Bankruptcy Rules**

proceeding shall be made by certified mail addressed to an officer of the institution unless—

- (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
- (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
- (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Rule 7004(h) was enacted by Congress as part of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106. Section 114 of that law declared that “Rule 7004 of the Federal Rules of Bankruptcy Procedure is amended” to add the text of new subdivision (h).

At the spring 2018 Advisory Committee meeting, the Committee concluded that Rule 7004(h) is not applicable to credit unions because, being insured by the National Credit Union Administration, credit unions do not fall within section 3 of the Federal Deposit Insurance Act.<sup>1</sup> The Committee also decided not to take further action on Suggestion 17-BK-E, which sought an expansion of Rule 7004(h) to include credit unions.

Because of the limited scope of Rule 7004(h), other rule provisions that require service in the manner provided “by Rule 7004” allow service by first class mail under Rule 7004(b) on credit unions. These rules include Rules 3012(b) (request for a determination of the amount of a secured claim in a chapter 12 or 13 plan), 4003(d) (avoidance of a lien on exempt property in a chapter 12 or 13 plan), 5009(d) (motion for an order declaring a lien satisfied and released), 9011(c)(1) (motion for sanctions), and 9014(b) (motion initiating a contested matter).

The 2017 amendments to Rule 3007 were intended to clarify that objections to claims are generally not required to be served in the manner provided by Rule 7004. Instead, those objections may be served on most claimants by mailing them to the person designated on the proof of claim. But that rule is subject to two exceptions. The one relevant here is set forth in subdivision (a)(2)(A)(ii). It provides that “insured depository institutions” must be served “in the manner provided by Rule 7004(h).” The Advisory Committee added that exception in an effort to comply with the legislative mandate in Rule 7004(h) that such institutions be served by certified mail in contested matters and adversary proceedings.

The Advisory Committee subsequently realized that the promulgation of Rule 3007(a)(2)(A)(ii) failed to take account of the Bankruptcy Code definition of “insured depository

<sup>1</sup> Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c)(2), provides, “The term ‘insured depository institution’ means any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter.” The “Corporation” is the Federal Deposit Insurance Corporation. *Id.* at § 1811(a).

**Excerpt from the May 18, 2020 Report of the Advisory Committee on Bankruptcy Rules**

institution.”<sup>2</sup> The Code definition, which includes credit unions in addition to banks insured by the FDIC, is made applicable to the Bankruptcy Rules by Rule 9001. However, the Committee concluded that the definition does not change the scope of Rule 7004(h), because in the latter provision Congress expressly included a specific and narrower definition of insured depository institution—one defined in section 3 of the Federal Deposit Insurance Act. That specific reference in Rule 7004(h) overrides the more general definition in § 101(35).

The existence of a Code definition of insured depository institution does, however, affect the scope of Rule 3007(a)(2)(A)(ii). That provision does not say that service according to Rule 7004 is required; instead, it specifically requires service according to Rule 7004(h). And it applies to an “insured depository institution” without providing any special definition of that term. Accordingly, the § 101(35) definition applies, and credit unions are brought within the requirement that Rule 7004(h) service be made. That means that only under this one rule are credit unions required to receive service by certified mail.

The Advisory Committee proposed the amendment to Rule 3007(a)(2)(A)(ii) to eliminate the inclusion of credit unions by limiting the term “insured depository institution” to the meaning set forth in section 3 of the Federal Deposit Insurance Act. The underlying intent of the Advisory Committee in previously proposing the amendments to Rule 3007 was to clarify that Rule 7004 service is generally not required for objections to claims. The exception in subdivision (a)(2)(A)(ii) was included based on the belief that it was required by the congressionally imposed requirement of Rule 7004(h); there was no intent, however, to expand the scope of that heightened service requirement.

In response to publication of the amendment to Rule 3007(a)(2)(A)(ii), the only comment submitted was the general statement by the NCBJ that it “supports the amendments.” Accordingly, the Advisory Committee voted unanimously to recommend that the Standing Committee give final approval to the rule as published.

**Action Item 3. Rule 7007.1 (Corporate Ownership Statement).** Continuing the advisory committees’ efforts to conform the various disclosure-statement rules to the amendments made to FRAP 26.1, which went into effect in December, the Advisory Committee proposed for publication conforming amendments to Rule 7007.1. Similar amendments to Rule 8012—the bankruptcy appellate disclosure-statement rule—have been sent to Congress. Rule 7007.1 requires corporate-ownership disclosure in the bankruptcy court and is proposed for amendment to parallel the relevant amendments to Civil Rule 7.1 that were also published last August. Like that rule, amended Rule 7007.1 would be made applicable to nongovernmental corporations seeking to intervene and would no longer require the submission of two copies of the statement.

Two comments were submitted in response to publication. The first, submitted by Aderant, suggested that the word “shall” be changed to “must” to conform to the wording of the parallel rules. The Advisory Committee concluded that this change should be made when the Part VII rules are restyled. In the meantime, the Bankruptcy Rules (other than Part VIII) are continuing to

<sup>2</sup> Section 101(35) provides that the “term ‘insured depository institution’—(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and (B) includes an insured credit union (except in the case of paragraphs (21B) and (33A) of this subsection).”

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use “shall” rather than “must” so that the change can be made at the same time throughout the rules and not on a piecemeal basis.

The other comment was submitted by the NCBJ. It suggested that, rather than conforming to Civil Rule 7.1’s terminology “disclosure statement,” Rule 7007.1 should retain the terminology “corporate ownership statement.” It pointed out that “disclosure statement” is a bankruptcy term of art with a different meaning and that there are five other Bankruptcy Rule references to Rule 7007.1 that use the term “corporate ownership statement.”

The Advisory Committee agreed with the NCBJ and voted unanimously to approve Rule 7007.1 with the current title retained and the word “disclosure” in subdivision (b) changed to “corporate ownership.”

**Action Item 4. Rule 9036 (Notice and Service Generally).** For several years, the Advisory Committee has been considering possible amendments to the Bankruptcy Rules to increase the use of electronic noticing and service in the bankruptcy courts. One set of amendments to Rule 9036 went into effect on December 1, 2019. Proposed amendments to Rule 2002(g) and Official Form 410 that were published along with the 2019 amendments to Rule 9036—authorizing creditors to designate an email address on their proofs of claim for receipt of notices and service—were held in abeyance by the Advisory Committee for further consideration. Additional amendments to Rule 9036 were published for public comment last August.

The recently published amendments to Rule 9036 would encourage the use of electronic noticing and service in several ways. The rule would recognize a court’s authority to provide notice or make service through the Bankruptcy Noticing Center (“BNC”) to entities that currently receive a high volume of paper notices from the bankruptcy courts. In anticipation of the simultaneous amendments of Rule 2002(g) and Official Form 410, it would also allow courts and parties to serve or provide notice to a creditor at an email address designated on its proof of claim. And it would provide a set of priorities for electronic noticing and service for situations in which a recipient had provided more than one electronic address to the courts.

Seven sets of comments were submitted regarding the proposed amendments to Rule 9036. Most of them were from clerks of court or their staff, and they expressed several concerns about the proposed amendments to Rule 9036, as well as to the earlier published amendments to Rule 2002(g) and Official Form 410.

There was enthusiastic support for the program to encourage high-volume paper-notice recipients to register for electronic bankruptcy noticing. No comments expressed opposition to it or concerns about it.

Many clerks, however, expressed opposition to several other aspects of the proposed Rule 9036 amendments. In addition to individual commenters, commenters included the Bankruptcy Clerks Advisory Group, the Bankruptcy Noticing Working Group, and an ad hoc group of 34 clerks of court. The concerns fell into three categories: clerk monitoring of email bounce-backs; administrative burden of a proof-of-claim opt-in for email noticing and service; and the interplay of the proposed amendments to Rules 2002(g) and 9036.

*Clerk monitoring of email bounce-backs.* Proposed Rule 9036(d) provides that “[e]lectronic notice or service is complete upon filing or sending but is not effective if the filer or



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sender receives notice that it did not reach the person to be served.” One clerk expressed concern that this provision imposes an administrative burden on the clerk’s office by requiring it to monitor undeliverable emails. He advocated for the addition of a sentence to subdivision (d) that would relieve clerks of that burden. No other comments raised this concern.

The Advisory Committee noted that the provision to which objection was raised is also included in the version of Rule 9036 that went into effect in December. The same provision is also in Rule 8011(c)(3), which became effective in 2018. In considering the provision in Rule 8011, the Advisory Committee spent considerable time discussing this provision, and it determined that all users of electronic noticing and service—clerks as well as parties—should be required to make effective service or noticing, which means continuing their efforts if they become aware that their prior attempt failed. The Advisory Committee voted not to change the language in question.

It did, however, decide that the other part of the comment’s suggestion—that an additional sentence be added that would make the electronic notice recipient responsible for maintaining and updating its electronic address with the bankruptcy clerk—would be helpful. That directive could reduce the number of bounce-backs. The Advisory Committee therefore voted to add the following sentence to the end of subdivision (d): “It is the recipient’s responsibility to keep its electronic address current with the clerk.”

*Administrative burden of allowing a creditor to opt-in to email noticing and service on its proof of claim.* This was the chief concern of the clerks and the Bankruptcy Noticing Working Group and was a concern that was expressed when the amendments to Rules 2002(g), 9036, and Form 410 were published in 2017. Without an automated process to retrieve email addresses in proofs of claim, clerks say that they will have to manually review every proof of claim to determine if the email box was checked and an email address was listed. According to one clerk, even automation will not solve all the problems because paper proofs of claim will still be filed, and they will contain errors and illegible entries that will require staff time to resolve. Several of the comments noted that the high-volume paper-notice program will produce significant savings for the courts, and that any savings resulting from low-volume users opting into email notice will be outweighed by administrative costs.

The proposal for email opt-in on proofs of claim would not be just for the benefit of the judiciary, which already has the Electronic Bankruptcy Noticing program. Instead, it was also intended to benefit parties, who could save mailing costs in serving creditors who opt into email notice. Because parties cannot be forced to accept electronic service and notice, an opt-in procedure seemed to be the best approach. And providing that opportunity in the proof of claim seemed the best mechanism to pursue since Rule 2002(g)(1)(A) already provides that “a proof of claim filed by a creditor . . . that designates a mailing address constitutes a filed request to mail notices to that address.” Under subdivision (g)(1) of that rule, notices required to be mailed to a creditor “shall be addressed as such entity . . . has directed in its last request filed in the particular case.” The amendment to Rule 2002(g) published in 2017 would expand that rule to include email addresses, and Rule 9036 would recognize transmission to that email address as a proper means of service or noticing.

In deciding not to go forward in 2018 with the amendments to Rule 2002(g) and Form 410 that would provide for opting into email service, the Advisory Committee accepted the concerns that were raised then by clerks about the lack of an automated means of retrieving the designated

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email addresses. The Advisory Committee was told then that such automation would not be feasible until 2021. The decision in 2019 to propose the new amendments to 9036, with the anticipation that approval would also be sought for the Rule 2002(g) and Form 410 amendments, was made with the expectation that automation would be feasible by the amendments' December 1, 2021 effective date.

One clerk said, however, that even with automation, the burden on the clerk's office will still be too great because of the number of paper proofs of claim that will be filed. While the comment from the Bankruptcy Noticing Working Group suggested some ways that burden might be reduced, the Advisory Committee decided that the proof-of-claim check-box option should not be pursued. Deciding not to go forward with the proposed amendments to Rule 2002(g) and Official Form 410, and deleting references to that option in Rule 9036, would allow the courts to receive the benefits of the high-volume paper-notice program, which is anticipated to result in significant savings to the judiciary, without imposing what many clerks perceive as an undue burden on them of having to review proofs of claim for email addresses. This approach does not provide any benefit to parties, however, because they will not have access to electronic addresses registered with the BNC, but it is anticipated that future improvements to CM/ECF will allow the entry of email addresses in a way that will be accessible to parties as well as to those within the court system. Language proposed by the Subcommittee in Rule 9036(b)(2) would allow for that future possibility. Accordingly, the Advisory Committee voted unanimously to approve the revised version of the published amendments to Rule 9036 that is set forth in the appendix.

*Interplay of the proposed amendments to Rules 2002(g) and 9036.* Given the Advisory Committee's recommendation not to go forward with the proposed amendments to Rule 2002(g) and Official Form 410, this concern raised by the comments is no longer an issue.

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