

Amendments to the
Federal Rules
of Bankruptcy
Procedure and
Official Forms Effective
December 1, 2016

United States Bankruptcy Court
District of South Dakota

The United States Supreme Court has adopted several amendments to the Federal Rules of Bankruptcy Procedure that will take effect December 1, 2016. A couple official bankruptcy forms are also being updated, and there are a few fee increases effective December 1, 2016, too.

Disclaimer: This presentation is not intended to be all encompassing and should not be considered legal advice. All parties should conduct their own study of the changes before advising their clients, filing documents, and appearing before the Court.

The following Federal Rules of Bankruptcy Procedure will be amended:

- ▶ 1010
- ▶ 1011
- ▶ 1012
- ▶ 2002
- ▶ 3002.1
- ▶ 7008
- ▶ 7012
- ▶ 7016
- ▶ 9006
- ▶ 9027
- ▶ 9033

On the next several pages are summaries of each amendment based on the official Committee Notes.

[You may click through the next five pages pretty fast. . . .]

Rule 1010. Service of Involuntary Petition and Summons

Subdivision (a) of this rule is amended to remove provisions regarding the issuance of a summons for service in certain chapter 15 proceedings. The requirements for notice and service in chapter 15 proceedings are found in Rule 2002(q).

[May we never have a chapter 15 in the District of South Dakota]

Rule 1011. Responsive Pleading or Motion in Involuntary

This rule is amended to remove provisions regarding chapter 15 proceedings. The requirements for responses to a petition for recognition of a foreign proceeding are found in Rule 1012.

Rule 1012. Responsive Pleading in Cross-Border Cases

This rule is added to govern responses to petitions for recognition in cross-border cases. It incorporates provisions formerly found in Rule 1011. Subdivision (a) provides that the debtor or a party in interest may contest the petition. Subdivision (b) provides for presentation of responses no later than 7 days before the hearing on the petition, unless the court directs otherwise. Subdivision (c) governs the filing of corporate ownership statements by entities responding to the petition.

[May we never have another cross-border case in South Dakota. . . .]

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

Subdivision (q) is amended to clarify the procedures for giving notice in cross-border proceedings. The amended rule provides, in keeping with Code § 1517(c), for the court to schedule a hearing to be held promptly on the petition for recognition of a foreign proceeding. The amended rule contemplates that a hearing on a request for provisional relief may sometimes overlap substantially with the merits of the petition for recognition. In that case, the court may choose to consolidate the hearing on the request for provisional relief with the hearing on the petition for recognition, see Rules 1018 and 7065, and accordingly shorten the usual 21-day notice period.

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

Subdivision (a) is amended to clarify the applicability of the rule. Its provisions apply whenever a chapter 13 plan provides that contractual payments on the debtor's home mortgage will be maintained, whether they will be paid by the trustee or directly by the debtor. The reference to § 1322(b)(5) of the Code is deleted to make clear that the rule applies even if there is no prepetition arrearage to be cured. So long as a creditor has a claim that is secured by a security interest in the debtor's principal residence and the plan provides that contractual payments on the claim will be maintained, the rule applies.

Subdivision (a) is further amended to provide that, unless the court orders otherwise, the notice obligations imposed by this rule cease on the effective date of an order granting relief from the automatic stay with regard to the debtor's principal residence. Debtors and trustees typically do not make payments on mortgages after the stay relief is granted, so there is generally no need for the holder of the claim to continue providing the notices required by this rule. Sometimes, however, there may be reasons for the debtor to continue receiving mortgage information after stay relief. For example, the debtor may intend to seek a mortgage modification or to cure the default. When the court determines that the debtor has a need for the information required by this rule, the court is authorized to order that the notice obligations remain in effect or be reinstated after relief from the stay is granted.

Rule 7008. General Rules of Pleading

The rule is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to add the requirement that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. Rule 7012(b) has been amended to require a similar statement in a responsive pleading. The bankruptcy judge will then determine the appropriate course of proceedings under Rule 7016.

[You'll need to update those form complaints and form answers you've been relying on for the past dozen years. . . . Just a note, it appears Federal Rule of Bankruptcy Procedure 7008 is not one of the adversary rules that is made applicable to contested matters via Fed.R.Bankr.P. 9014.]

Rule 7012. Defenses and Objections – When and How Presented – By Pleading or Motion – Motion for Judgment on the Pleadings

Subdivision (b) is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to add the requirement that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. The amended rule also removes the provision requiring express consent before the entry of final orders and a judgment in a non-core proceeding. Some proceedings that satisfy the statutory definition of a core proceeding, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. This amendment complements the requirements of amended Rule 7008(a). The bankruptcy judge's subsequent determination of the appropriate course of the proceeding, including whether to enter final orders and a judgment or to issue proposed findings of fact and conclusions of law, is a pre-trial matter now provided for in amended Rule 7016.

Rule 7016. Pre-trial Procedures

This rule is amended to create a new subdivision (b) that provides for the bankruptcy court to enter final orders and a judgment, issue proposed findings and conclusions, or take some other action in a proceeding. The rule leaves the decision as to the appropriate course of a proceeding to the bankruptcy court. The court's decision will be informed by the parties' statements, required under Rules 7008(a), 7012(b), and 9027(a) and (e), regarding consent to the entry of final orders and a judgment. If the bankruptcy court chooses to issue proposed findings of fact and conclusions of law, Rule 9033 applies.

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

Subdivision (f) is amended to remove service by electronic means under Civil Rule 5(b)(2)(E) from the modes of service that allow three added days to act after being served. The amendment also adds clarifying parentheticals identifying the forms of service under Rule 5(b)(2) for which three days will still be added.

As set forth in the official Committee Notes, “Eliminating Rule 5(b) subparagraph (2)(E) from the modes of service that allow three added days means that the three added days cannot be retained by consenting to service by electronic means. Consent to electronic service in registering for electronic case filing [*such as CM/ECF*], for example, does not count as consent to service “by any other means” of delivery under subparagraph (F).”

[Because we already include a last date for objections in most all our notices and because that “LDO” already incorporates Fed.R.Bankr.P. 9006(f) whenever it applies, this amendment will have limited impact in our district. . . .]

Rule 9027. Removal

Subdivisions (a)(1) and (e)(3) are amended to delete the requirement for a statement that the proceeding is core or non-core and to add the requirement in all removed actions for a statement that the party does or does not consent to the entry of final orders or a judgment by the bankruptcy court. Some proceedings, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for a statement regarding consent at the time of removal, whether or not a proceeding is termed non-core.

The party filing the notice of removal must include a statement regarding consent in the notice, and the other parties who have filed pleadings must respond in a separate statement filed within 14 days after removal. If a party to the removed claim or cause of action has not filed a pleading prior to removal, however, there is no need to file a separate statement under subdivision (e)(3), because a statement regarding consent must be included in a responsive pleading filed pursuant to Rule 7012(b). Rule 7016 governs the bankruptcy court's decision whether to hear and determine the proceeding, issue proposed findings of fact and conclusions of law, or take some other action in the proceeding.

[Removal actions are pretty rare, but you should keep this one in your brief case. . . .]

Rule 9033. Proposed Findings of Fact and Conclusions of Law

Subdivision (a) is amended to delete language limiting this provision to non-core proceedings. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. If the bankruptcy court decides, pursuant to Rule 7016, that it is appropriate to issue proposed findings of fact and conclusions of law in an adversary proceeding, this rule governs the subsequent procedures.

[Another “Stern” change. . . .]

Fee Changes Effective December 1, 2016*

Bankruptcy Court Miscellaneous Fee Schedule (28 U.S.C. § 1930)	Description	Current Fee	Approved New Fee
Item No.			
2	For exemplification of any document	\$21	\$22
3	For reproduction of an audio recording of a court proceeding	\$30	\$31
4	For filing an amendment to the debtor's schedule of creditors, lists of creditors, or mailing list...	\$30	\$31
5	For conducting a search of the bankruptcy court records...	\$30	\$31
7	For filing any document that is not related to a pending case or proceeding . . .	\$46	\$47
19	For filing the following motions. . . <ul style="list-style-type: none"> •To terminate, annul, modify or condition the automatic stay; •To compel the abandonment of property of the estate. . . •To withdraw the reference of a case or proceeding. . . •To sell property of the estate free and clear of liens under [11 U.S.C. § 363(f)]. 	\$176	\$181

**We don't set fees, we just collect them.*

Forms

Only three forms are being slightly modified for use after December 1, 2016.



Form 420A Notice of a Motion or Objection Form 420B Notice of Objection to Claim

The form numbers are updated to comport with the form numbering style developed as part of the Forms Modernization project. The forms are also amended to change the phrase “mail” to “send” to reflect the fact that there are various methods of providing documents to other parties.

Form 410S2 Notice of Postpetition Mortgage Fees, Expenses, and Charges

Form 410S2, *Notice of Postpetition Mortgage Fees, Expenses, and Charges*, is amended in the instructions in Part 1 to clarify how to report previously approved fees, expenses, or charges. The following language is added: “If the court has previously approved an amount, indicate that approval in parentheses after the date the amount was incurred.” This amended language replaces the prior instruction not to report any amounts previously ruled on by the bankruptcy court.

That's it. Nothing too difficult.
We hope this overview was helpful.

For a complete copy of the amended rules and forms, please visit the United States Courts' website at:

<http://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments>

Our thanks to the United States Bankruptcy Court for the Eastern District of Oklahoma for sharing its PowerPoint and allowing us to customize it for our district.

If you have any questions, please contact:

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