

Revisions to Bankruptcy Rules and Forms Effective December 1, 2023

On September 20th, 2022, the Judicial Conference of the United States approved proposed amendments to the Federal Rules of Bankruptcy Procedure. The proposed amendments were transmitted to the United States Supreme Court on October 9th, 2022. The Supreme Court adopted the proposed amendments, and they were transmitted to Congress on April 24th, 2023. Absent congressional intervention, the proposed amendments will take effect on December 1, 2023.

CHANGES TO BANKRUPTCY RULES	
Current Rule	<u>Rule 3011</u>
Changes to Rule (Blackline)	<u>Rule 3011</u>
Summary of Changes	Rule 3011 (Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13) Rule 3011 is amended to require the Clerk to provide searchable access on the court’s website to information about unclaimed funds deposited pursuant to § 347(a). The court may limit access to information about such funds in a specific case for cause, including, for example, if such access risks disclosing the identity of claimants whose privacy should be protected, or if the information about the unclaimed funds is so old as to be unreliable.
Changes to Official or Director’s Forms	No
Additional Local Considerations	The Clerk already provides the searchable criteria referenced in the rule. Local B1340 Form revised to include changes made to Director’s Procedural Form. New B1340 Certificate of Service Form. TNMB website instructions and forms for unclaimed funds updated. No changes necessary to Local Bankruptcy Rules.

Current Rule	<u>Rule 8003</u>
Changes to Rule (Blackline)	<u>Rule 8003</u>
Summary of Changes	Rule 8003 (Appeal as of Right - How Taken; Docketing the Appeal) Subdivision (a) is amended to conform to recent amendments to Fed. R. App. P. 3(c), which clarified that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment or appealable order or decree. These amendments reflect that a notice of appeal is supposed to be a simple document that provides notice that a party is appealing and invokes the jurisdiction of the appellate court. Therefore, it must state who is appealing, what is being appealed, and to what court the appeal is being taken. It is the role of the briefs, not notice of appeal, to focus the issues on appeal. Subdivision (a)(3)(B) is amended in an effort to avoid the misconception that it is necessary or appropriate to identify each and every order of the bankruptcy court that the appellant may wish to challenge on appeal. It requires the attachment of “the judgment—or the appealable order decree—from which the appeal is taken”—and the phrase “or the part of it” is deleted. In most cases, because of the merger principle, it is appropriate to identify and attach only the judgment or the appealable order or decree from which the appeal as of right is taken. Subdivision (a)(4) now calls attention to the merger principle. The general merger rule can state it simply: an appeal from a final judgment or appealable order decree permits review of all rulings that led up to the judgment, order, or decree. Because this general rule is subject to some exceptions and complications, the amendment does not attempt to codify the merger principle but instead leaves its details to case law. The amendment does not change the principle established in but in <i>Budinich v. Becton Dickinson & Company</i>, 486 U.S. 196, 202-03, that “a decision on the merits is a ‘final decision’ . . . whether or not there remains for adjudication or request for attorney’s fees attributed to the case.” Sometimes a party who is aggrieved by a final judgment will make a motion in the bankruptcy court instead of immediately filing a notice of appeal. Rule 8002(b) permits a party to make certain motions to await disposition of those motions before appealing. But some courts treat a notice of appeal that identifies only the order disposing of such motion as limited to that order, rather than bringing the final judgment before the appellate court for review. To reduce the unintended loss of appellate rights in this situation, subdivision (a)(5) is added. This amendment does not alter the requirement of rule 8002(b)(3) (requiring a notice of appeal or an amended notice of appeal if a party intends to challenge an order of disposing of certain motions).

	Subdivision (a)(6) is added to enable deliberate limitations of the notice of appeal. It allows an appellant to identify only part of the judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, however, specific identifications do not limit the scope of the notice of appeal. On occasion, a party may file a notice of appeal after a judgment or appeal of the order or decree but identify only a previously nonappealable order that merged into that judgment or appealable order or decree. To deal with this situation, subdivision (a)(7) is added to provide an appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into the judgment, order, or decree from which the appeal is taken. In this situation, a court should act as if the notice had properly identified the judgment or appealable order or decree. In determining whether a notice of appeal was filed after the entry of the judgment, Rules 8002(a)(2) and (b)(2) apply.
Changes to Official or Director's Forms	Yes (Official Form 417A Notice of Appeal and Statement of Election)
Additional Local Considerations	No
Current Rule	Rule 9006
Changes to Rule (Blackline)	Rule 9006
Summary of Changes	Rule 9006 (Computing and Extending Time; Time for Motion Papers) The amendment adds “Juneteenth National Independence Day” to the list of legal holidays. See, Juneteenth National Independence Day Act, P.L. 117-17 (2021) (amending 5 U.S.C. § 6103(a)).
Changes to Official or Director's Forms	No

Additional Local Considerations	No The Clerk already provides the searchable criteria referenced in the rule.
Current Rule	<u>Rule 9038 (New)</u>
Changes to Rule (Blackline)	<u>Rule 9038 (New)</u>
Summary of Changes	Rule 9038 <u>New</u> (Bankruptcy Rules Emergency) This is a new rule. It provides authority to extend or toll the time limits in these rules during times of major emergencies affecting the bankruptcy courts. The continuing operation of the bankruptcy courts during the COVID-19 pandemic showed that the existing rules are flexible enough to accommodate remote proceedings, service by mail, and electronic transmission of documents. Nevertheless, it appeared that greater flexibility than Rule 9006(b) provides might be needed to allow the extension of certain time periods in specific cases or any extension on a district-wide basis in response to an emergency. Emergency rule provisions have also been added to the Civil, Criminal, and Appellate Rules. Along with the Bankruptcy Rule, these rules have been made as uniform as possible. But each set of the rules serves distinctive purposes, shaped by different origins, traditions, functions, and needs. Different provisions were compelled by these different purposes. Subdivision (a) specifies the limited circumstances under which the authority conferred by this rule may be exercised. The Judicial Conference of the United States has the exclusive authority to declare a Bankruptcy Rules emergency, and it may do so under extraordinary circumstances. Those circumstances must relate to public health or safety or effect physical or electronic access to a bankruptcy court. And, importantly, the court's ability to operate in compliance with the Bankruptcy Rules must be substantially impaired. Under subdivision (b)(1), a Bankruptcy Rules emergency declaration must specify the bankruptcy courts to which it applies because, instead of being nationwide, an emergency might be limited to one area of the country or even to a particular state. The declaration must also specify a termination date that is no later than 90 days from the declaration's issuance. Under

	subdivisions (b)(2) and (b)(3), however, that time period may be extended by the issuance of additional declarations or reduced by early termination if circumstances change. The declaration must also specify any limitations placed on the authority granted in subdivision (c) to modify time periods. Subdivision (c)(1) and (c)(2) grant the authority, during declared Bankruptcy Rules emergencies, to extend or toll deadlines to the chief bankruptcy judge of a district on a district- or district-wide basis or to the presiding judge in specific cases. Unless limited by the emergency declaration, this authority extends to all time periods in the rules that are not also imposed by the statute. It also applies to directives to take quick action, such as rule provisions that require action to be taken “promptly,” “forthwith,” “immediately,” or “without delay.” Subdivision (c)(3), which addresses the termination of extensions tolling, provides a “soft landing” upon the termination of a Bankruptcy Rules emergency. It looks to three possible dates for a time period to expire. An extended or toll time period will terminate either 30 days after the rules-emergency declaration terminates or when the original time period would have expired, whichever is later—unless the extension of tolling itself expires sooner than 30 days after the declaration’s termination. In that case, the extended expiration date will apply. Subdivision (c)(4) allows fine tuning and individual cases of extensions of time or tollings that have been granted. Subdivision (c)(5) excepts from the authority to extend time periods any time provision imposed by statute. The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, does not authorize the Bankruptcy Rules to supersede conflicting laws. Accordingly, a time limit in a rule that is a restatement of a deadline imposed by statute or an incorporation by reference of such a deadline may not be extended under this rule. However, if a statute merely incorporates by reference the time period imposed by a rule, that period may be extended.
Changes to Official or Director’s Forms	No
Additional Local Considerations	No

**PROPOSED CHANGES TO OFFICIAL BANKRUPTCY FORMS
EFFECTIVE DECEMBER 1, 2023**

Original Form	<u>Official Form 410A</u> Proof of Claim Attachment
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Revised Form	<u>Official Form 410A</u>
Summary	Official Form 410A (Proof of Claim Attachment) Part 3 of Form 410A is amended to provide for separate itemization of principal due and interest due. Because under §1322(e) the amount necessary to cure default is “determined in accordance with the underlying agreement and applicable nonbankruptcy law,” and it may be necessary for a debtor who is curing arrearages under § 1325(a)(5) to know which portion of the total arrearages is principal and which is interest.
Local Considerations	No
Original Form	<u>Official Form 417A</u> Notice of Appeal and Statement of Election
Revised Form	<u>Official Form 417A</u>
Summary	Parts 2 and 3 of the form are amended to conform to wording in the simultaneously amended Rule 8003. The new wording is intended to remind appellants that appeals as of right from orders and decrees are limited to those that are “appealable” — that is, either deem final or issued under § 1121(d). <i>See</i>, 28 U.S.C. § 158(a)(2). It also seeks to avoid the misconception that it is necessary or appropriate to identify each and every order of the bankruptcy court that the appellant may wish to challenge on appeal. It requires identification of only “the judgment—or the appealable order or decree—from which the appeal is taken.”
Local Considerations	No

Original Form	<u>Director's Form 1340</u> Application for Payment of Unclaimed Funds
Revised Form	<u>Director's Form 1340</u>
Summary	Changes are made to discourage fraudulent application by persons asserting that they are a successor claim holder. Form instructions and a new certificate of service are also provided the form instructions. The new certificate of service is modified to provide for the local practice.
Local Considerations	Local Form 1340 on court website revised to incorporate modifications made to Director's Form. New Certificate of Service form attached to Motion for Unclaimed Funds located on the Unclaimed Funds portion of the court's website (www.tnmb.uscourts.gov) available in Word and .pdf formats.