

Federal Bankruptcy Rule and Form Changes

Effective December 1, 2018

United States Bankruptcy Court,
District of Rhode Island



Released November 2018

Pending Amendments to the Federal Bankruptcy Rules

On April 26, 2018, the Supreme Court adopted changes to the Federal Rules of Bankruptcy Procedures which take effect on December 1, 2018.

The following is a summary of the proposed changes to the Federal Bankruptcy Rules, Official Forms and changes to the Court's ECF system.

Disclaimer: This packet is not intended to be all encompassing and should not be considered legal advice. All parties acting before the Court should perform any and all research prior to filing.



The following Federal Bankruptcy Rules are amended as of December 1, 2018

- 3002.1
- 5005
- 7004
- 7062
- 8002
- 8006
- 8007
- 8010
- 8011
- 8013
- 8015
- 8016
- 8017
- 8018.1 (new)
- 8021
- 8022
- 9025



Rule 3002.1: Notice of Payment Change

Home Equity Line of Credit


Subdivision (b)(1) change: The rule requires 21 days' advance notice of any payment change, however, in cases of home equity lines of credit (HELOC), the courts may specify alternative notice requirements either by local rule or orders in individual cases.



Creditor Form: Use Existing Official Form B410S1

Notice of Mortgage Payment Change, to Indicate a Change to a HELOC Loan Payment

Part 3 of Official Form 410S1, Notice of Mortgage Payment Change, should be used to provide notice of payment changes for HELOCs.



Part 3: Other Payment Change

3. Will there be a change in the debtor's mortgage payment for a reason not listed above?

No

Yes. Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement.
(Court approval may be required before the payment change can take effect.)

Reason for change: _____

Current mortgage payment: \$ _____ New mortgage payment: \$ _____

Official Form 410S1 Notice of Mortgage Payment Change page 1

Rule 3002.1 – Notice of Payment Change

Determining the Validity of Payment Change

- The rule now affirmatively acknowledges the right of a party in interest to object to a home mortgage payment change.
- No deadline for filing the motion, but if filed after the effective date, the change will go into effect.
- If it is determined that the change was not required, appropriate adjustments must be made to reflect any overpayment.
- If the motion lead to a suspension of the payment change, and is later determined the change was valid, the debtor will be required to cure the resulting default.



New Party Event to Implement Rule 3002.1(b)(2)

Motion to Determine Validity of Payment Change

- The event for filing the *Motion to Determine Validity of Payment Change* can be found under Bankruptcy>Motions>Determine Validity of Payment.
- The filer will be prompted to indicate if the payment change is regarding a Home Equity Line of Credit.



Rule 5005 – Filing and Transmittal of Papers

Electronic Filing

- The rule change makes electronic filing mandatory in all districts for entities represented by an attorney, unless the court allows non-electronic filing for good cause or by local rule.
- The rule also defines an original signature as “ a filing made through a person’s electronic-filing account, together with the person’s name on the signature block”.



Rule 7004- Process; Service of Summons, Complaint

Modified and renumbered to update the cross reference to Civil Rule 4.



Rule 7062- Stay of Proceedings to Enforce a Judgment

Maintaining the 14 Day Stay to Enforce a Judgment

- Bankruptcy Rule 7062 incorporates *all* of FRCP 62, except for the amended deadline providing for a 30 day stay to enforce a judgment.
- Bankruptcy Rule 7062 retains the 14 day stay.



Rule 8002 – Time for Filing Notice of Appeal

8002(a)(5) - Effect of a Separate Document

- New 8002(a)(5) clarifies the effect of the separate-document requirement of FRCP 58(a) on the entry of a judgment, order or decree for the purposes of determining the time for filing a notice of appeal.
- If the rule requires a judgment be set out on a separate document, the time for filing an appeal runs from when the separate document is docketed, or if no separate document is prepared, 150 days from when the judgment was entered on the docket.



Rule 8002 – Time for Filing Notice of Appeal

8002(b)(1) Certain Post-Judgment Motions

- When a party timely files certain post-judgment motions, the rule provides that the time to file the appeal runs from the entry of an order disposing of the last of such motions.
- The rule is amended to clarify that a motion made outside of the time allowed will not qualify as a motion that re-starts the appeal time, even if a court order or by agreement of parties, the date for such a motion is extended.



Rule 8002 – Time for Filing Notice of Appeal

8002(c)(1) – Inmate Filing Rule

- The rule requires the inmate to show timely mail deposit and prepayment of postage with respect to filing of an appeal.
- The rule is amended to specify that the notice is timely filed if it is accompanied by a declaration or notarized statement that the notice was deposited in the institution's mail system and that the first class postage "is being prepaid".
- The former rule directed that the declaration state that the first class postage "has been prepaid". This change reflects the fact that inmates may need to rely on the institution to affix postage.



Rule 8006 – Certifying a Direct Appeal to the Court of Appeals

Statement Regarding Certification of Direct Appeal

- Rule 8006(e)(2) allows a party in interest to file a statement on the merits when the Bankruptcy Court files a certification for direct review to the Court of Appeals.
- The rule is also amended to provide authority for the Bankruptcy Court to file a statement on the merits when parties file a certification for direct review to the Court of Appeals.
- In both cases, these statements must be filed within 14 days of a Certification of Direct Appeal.



New Party Event to Implement Rule 8006(e) – Certifying a Direct Appeal to the Court of Appeals

Supplemental Statement Regarding Certification of Direct Appeal

The events for filing the Motion to Determine Validity of Payment Change can be found under:

- **Bankruptcy**>Appeal>Supplemental Statement re: Certification of Direct Appeal
- **Adversary**>Appeal>Supplemental Statement re: Certification of Direct Appeal.



New Court Event to Implement Rule 8006(c)(2) – Certifying a Direct Appeal to the Court of Appeals

Court's Statement/Supplemental re: Certification of Direct Appeal

This event will be used by the Court when issuing a statement regarding the merits of the parties' certification



Rule 8007 – Stay Pending Appeal; Bonds; Suspension of Proceedings

Supersedeas Bond

- The rule is amended to conform with the change to FRCP 62.
- The rule now allows the party to obtain a stay or to enforce a judgment by providing a “bond or other security”.



Rule 8010 – Completing and Transmitting the Record

Supersedeas Bond

As with the change to Rule 8007, the requirement to obtain a stay or enforce a judgment pending appeal is amended to allow a party to provide a “bond or other security”.



Rule 8011 – Filing and Service; Signature

Bankruptcy Appeals Pending Before the BAP, District Court, or Appellate Court on Direct Appeal

- 8011(a)(2) makes electronic filing mandatory with certain exceptions.
- 8011(a)(2)(A)(iii) is revised to conform with the amendments to Rule 8002 (the inmate rule).
- 8011(c) authorizes electronic service on registered ECF users without their consent, and by other electronic service with written consent of the party served.
- 8011(d) eliminates the requirement of proof of service when service is made on registered users through ECF.



Rule 8013 – Motions; Intervention

Length Limits

- With respect to bankruptcy appeals pending before the BAP, District Court or Appellate Court, page limits are replaced with word limits for motions and responses produced using a computer.
- Page limits are retained for papers prepared without the aid of a computer.
- [See final slide](#) for link to the chart of Appendix VIII word and page limit computation.



Rule 8015 – Form and Length of Briefs; Form of Appendices and Other Papers

With Respect to Bankruptcy Appeals Pending before the BAP, District Court or Appellate Court

- 8015(a)(7) adopts recent change to FRAP 32, which reduced the word limits generally allowed for briefs.
- 8015(f) makes clear the Court's authority to grant leave to extend the limits, when warranted.
- New subdivision (g) sets forth those items excluded when computing length limit.



Rule 8016 – Cross Appeals

Length Limits Allowed for Briefs in Cross Appeals

- Rule 8016(d)(2) adopts the same reduced word limits generally allowed for briefs in cross appeals as those set forth in FRAP 32(a)(7).
- [See final slide](#) for link to the chart of Appendix VIII word and page limit computation.



Rule 8017 – Brief of an Amicus Curiae

- Rule 8017 is renumbered Rule 8017(a) and new 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.
- New 8017(b) governs amicus filings during a BAP or District Court's consideration of whether to grant a motion for rehearing.



New Rule 8018.1

District Court Review of a Judgment that the Bankruptcy Court Lacked the Constitutional Authority to Enter

- This rule is new.
- It is added to allow the District Court to treat the Bankruptcy Court's judgment as proposed finding of facts and conclusions of law whenever it determines that the Bankruptcy Court lacked the constitutional authority to enter the judgment, order or decree from which the appeal was taken.



Rule 8021 - Costs

The requirement of a party to provide a “supersedeas bond” to obtain a stay of or to enforce a judgment of proceedings is amended to allow a party to provide a “bond or other security”.



Rule 8022 – Motion for Rehearing

Length Limits

- For motions for rehearing, subsection (b) is amended to conform with FRAP 40(b) -- word limits are substituted for page limits in documents prepared on a computer.
- Page limits are retained for papers prepared without the aid of a computer.
- [See final slide](#) for link to the chart of Appendix VIII word and page limit computation.



Rule 9025 – Security: Proceedings Against Security Providers

With the amendment to FRCP 62 and numerous 8000 bankruptcy rules allowing a party to obtain a stay or enforce a judgment by providing a “bond or other security”, this rule is amended to require that all security providers (not just “sureties”) submit to the jurisdiction of the court.



The Following Official Bankruptcy Forms are Revised as of December 1, 2018

- Official Form 3180W – Order of Discharge in a Chapter 13 Case
- Official Form 411A – General Power of Attorney
- Official Form 411B – Special Power of Attorney
- Official Form 417A – Notice of Appeal
- Official Form 417C – Certificate of Compliance with Type-Volume Limits
- Official Form 4170 – Declaration of Inmate Filing (new)



Official Form 3280W

Order of Discharge in a Chapter 13 Case

- What changed? On page 2 of the form order, the language describing certain debts not discharged in chapter 13 was changed from
 - “debts for most fines, penalties, forfeitures, or criminal restitution obligations” to
 - “debts for restitution, or a criminal fine, included in a sentence on debtor’s criminal conviction”
- The revised language is derived from 11 U.S.C. §1328(a)(3).



Official Forms 411A and 411B

General Power of Attorney and Special Power of Attorney

These forms have been re-designated as Official Forms.



Official Form 417A

Notice of Appeal and Statement of Election

The form includes a notice to inmate filers that Director's Form 4170 (Declaration of Inmate Filing) may be used to provide a declaration under Rule 8002(c)(1), regarding the mailing of a notice of appeal using an institution's legal mail system.



Official Form 417C

Certificate of Compliance with Type-Volume Limits

New 8015(h) requires that a brief submitted under Rules 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4) or a document submitted under Rules 8013(f)(3)(A), (3)(C), or 8022(b)(1) must include the certificate of compliance.



New Official Form 4170

Declaration of Inmate Filing

This new official form (required by Rule 8002) is to be used as the required declaration or notarized statement for demonstrating that the notice was deposited in the institution's mail system and that the first class postage is being prepaid.



See the Below Resources for More Information:

- [Federal Bankruptcy Rules and Forms](#) –The Bankruptcy Rules appear in the amendments adopted by the Supreme Court section near the bottom of the page, and Bankruptcy Forms are directly above that section.
- [Chart](#) of Length Limits Stated in Part VIII of FRBP.
- [Local rule and form changes,](#) under [Rules and Procedures](#) or under the News and Announcements column on the home page.

Please direct any procedural questions to the Clerk's Office at 401-626-3100

