

April 2023: Before transmitting this package to Congress, a correction of a scrivener's error in the committee note for Rule 8003 was completed. The phrase "or part thereof" was updated to "or the part of it" to accurately quote the text of the rule.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE¹

1 **Rule 3011. Unclaimed Funds in Cases Under Chapter**
2 **7, Subchapter V of Chapter 11, Chapter**
3 **12, and Chapter 13²**

4 (a) The trustee shall file a list of all known names
5 and addresses of the entities and the amounts which they are
6 entitled to be paid from remaining property of the estate that
7 is paid into court pursuant to § 347 of the Code.

8 (b) On the court's website, the clerk must
9 provide searchable access to information about funds
10 deposited under § 347(a). The court may, for cause, limit
11 access to information about funds in a specific case.

Committee Note

Rule 3011 is amended to require the clerk to provide searchable access (as by providing a link to the U.S. Bankruptcy Unclaimed Funds Locator) on the court's website to information about unclaimed funds deposited pursuant to § 347(a). The court may limit access to

¹ New material is underlined.

² The title of Rule 3011 reflects amendments currently proposed to take effect on December 1, 2022, barring any contrary action by Congress.

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.

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

- 1 **Rule 8003. Appeal as of Right—How Taken;**
2 **Docketing the Appeal**
- 3 (a) FILING THE NOTICE OF APPEAL.
- 4 * * * * *
- 5 (3) *Contents.* The notice of appeal
6 must:
- 7 (A) conform substantially
8 to the appropriate Official Form;
- 9 (B) be accompanied by
10 the judgment,—or the appealable
11 order, or decree,—from which the
12 appeal is taken ~~or the part of it, being~~
13 ~~appealed~~; and
- 14 (C) be accompanied by
15 the prescribed fee.

¹ New material is underlined; matter to be omitted is lined through.

16 (4) Merger. The notice of appeal
17 encompasses all orders that, for purposes of
18 appeal, merge into the identified judgment or
19 appealable order or decree. It is not
20 necessary to identify those orders in the
21 notice of appeal.

22 (5) Final Judgment. The notice
23 of appeal encompasses the final judgment,
24 whether or not that judgment is set out in a
25 separate document under Rule 7058, if the
26 notice identifies:

27 (A) an order that
28 adjudicates all remaining claims and
29 the rights and liabilities of all
30 remaining parties; or

31 (B) an order described in
32 Rule 8002(b)(1).

Committee Note

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. It therefore 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 the 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 or 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 be stated simply: an appeal from a final judgment or appealable order or 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 *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202-03 (1988), that “a decision on the merits

is a ‘final decision’ . . . whether or not there remains for adjudication a request for attorney’s fees attributable 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)(1) permits a party who makes 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 a 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 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 a 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 appealable 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 that 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 judgment, Rules 8002(a)(2) and (b)(2) apply.

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

1 **Rule 9006. Computing and Extending Time; Time for**
2 **Motion Papers**

3 (a) COMPUTING TIME. The following rules
4 apply in computing any time period specified in these rules,
5 in the Federal Rules of Civil Procedure, in any local rule or
6 court order, or in any statute that does not specify a method
7 of computing time.

8 * * * * *

9 (6) “*Legal Holiday*” *Defined*. “Legal
10 holiday” means:

11 (A) the day set aside by statute for
12 observing New Year’s Day, Martin Luther
13 King Jr.’s Birthday, Washington’s Birthday,
14 Memorial Day, Juneteenth National
15 Independence Day, Independence Day,

¹ New material is underlined.

16 Labor Day, Columbus Day, Veterans' Day,
17 Thanksgiving Day, or Christmas Day;

18 (B) any day declared a holiday by
19 the President or Congress; and

20 (C) for periods that are measured
21 after an event, any other day declared a
22 holiday by the state where the district court is
23 located. (In this rule, "state" includes the
24 District of Columbia and any United States
25 commonwealth or territory.)

26 * * * * *

Committee Note

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)).

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

1 **Rule 9038. Bankruptcy Rules Emergency**

2 (a) CONDITIONS FOR AN EMERGENCY.

3 The Judicial Conference of the United States may declare a
4 Bankruptcy Rules emergency if it determines that
5 extraordinary circumstances relating to public health or
6 safety, or affecting physical or electronic access to a
7 bankruptcy court, substantially impair the court's ability to
8 perform its functions in compliance with these rules.

9 (b) DECLARING AN EMERGENCY.

10 (1) Content. The declaration must:

11 (A) designate the bankruptcy
12 court or courts affected;

13 (B) state any restrictions on the
14 authority granted in (c); and

¹ New material is underlined.

15 (C) be limited to a stated period of
16 no more than 90 days.

17 (2) Early Termination. The Judicial
18 Conference may terminate a declaration for one or
19 more bankruptcy courts before the termination date.

20 (3) Additional Declarations. The
21 Judicial Conference may issue additional
22 declarations under this rule.

23 (c) TOLLING AND EXTENDING TIME
24 LIMITS.

25 (1) In an Entire District or Division.
26 When an emergency is in effect for a bankruptcy
27 court, the chief bankruptcy judge may, for all cases
28 and proceedings in the district or in a division:

29 (A) order the extension or tolling
30 of a Bankruptcy Rule, local rule, or order that
31 requires or allows a court, a clerk, a party in
32 interest, or the United States trustee, by a

33 specified deadline, to commence a
34 proceeding, file or send a document, hold or
35 conclude a hearing, or take any other action,
36 despite any other Bankruptcy Rule, local
37 rule, or order; or

38 (B) order that, when a Bankruptcy
39 Rule, local rule, or order requires that an
40 action be taken “promptly,” “forthwith,”
41 “immediately,” or “without delay,” it be
42 taken as soon as is practicable or by a date set
43 by the court in a specific case or proceeding.

44 (2) *In a Specific Case or Proceeding.*

45 When an emergency is in effect for a bankruptcy
46 court, a presiding judge may take the action
47 described in (1) in a specific case or proceeding.

48 (3) *When an Extension or Tolling Ends.*

49 A period extended or tolled under (1) or (2)
50 terminates on the later of:

51 (A) the last day of the time period
52 as extended or tolled or 30 days after the
53 emergency declaration terminates, whichever
54 is earlier; or

55 (B) the last day of the time period
56 originally required, imposed, or allowed by
57 the relevant Bankruptcy Rule, local rule, or
58 order that was extended or tolled.

59 (4) Further Extensions or Shortenings.

60 A presiding judge may lengthen or shorten an
61 extension or tolling in a specific case or proceeding.
62 The judge may do so only for good cause after notice
63 and a hearing and only on the judge's own motion or
64 on motion of a party in interest or the United States
65 trustee.

66 (5) Exception. A time period imposed by
67 statute may not be extended or tolled.

Committee Note

The rule is new. 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 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 only under extraordinary circumstances. Those circumstances must relate to public health or safety or affect 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.

Subdivisions (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 division-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 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 and 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 tolled 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 or 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 in 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 a time period imposed by a rule, that period may be extended.