

Highlights for 2025 Edition

The 2025 revision of the *Bankruptcy Procedure Manual* reflect the authors' extensive annual review of the rules and caselaw on bankruptcy procedure. Major developments pertinent to bankruptcy practice are analyzed in the text.

The past year saw important statutory issues and new and extensively amended Rules of Bankruptcy Procedure, effective December 1, 2024.

Bankruptcy Code Issues—Eligibility Thresholds for Chapter 13 and Subchapter V of Chapter 11

The Bankruptcy Threshold Adjustment and Technical Corrections Act, S. 3823, Pub. L. 117-151, 136 Stat 1298 (June 21, 2022), changed Chapter 13 eligibility by eliminating the multiple secured/unsecured standard to a single, aggregate amount of \$2,750,000. The Act contained a Sunset provision, with the change expiring two years from enactment, June 21, 2024, unless Congress extended or otherwise modified the sunset. The Act also extended portions of the CARES Act retroactively, because Congress had failed to pass the extension before the provisions lapsed. The Act specifically extended the \$7,500,000 threshold for eligibility to elect subchapter V to June 21, 2024, unless Congress extended or otherwise modified the sunset.

As these revisions of this Manual were being prepared, an extension of these changes beyond their June 21, 2024, sunset had been proposed, but legislation had not been enacted. Absent such a retroactive extension, the debt threshold in section 101(51D)'s definition of a small business debtor returned to \$3,024,725. Similarly, section 109(e)'s debt limits for an individual filing bankruptcy under chapter 13 returned to \$465,275 unsecured and \$1,395,875 secured, restoring the distinction for unsecured and secured debt limits.

Federal Rules of Bankruptcy Procedure—New and Amended, Effective December 1, 2024

The following changes in the Bankruptcy Rules are reflected in this edition:

- Restyled Rules;
- Revised Rules 1007, 4004, 5009, 7001 and 9006; and
- New Rule 8023.1

Restyled Rules

All of the Bankruptcy Rules were restyled in 2024. These changes were intended to be stylistic only, but they were extensive, including formatting changes in presentations and changes to text viewed by the drafters as inconsistent, ambiguous, redundant, repetitive or archaic. The restyling process kept the same rule numbers, in an attempt to minimize the effect of the revision on research. However, titles of many rules and subdivisions of some were rearranged, consistent with the drafters' intent to achieve greater clarity and simplicity, plus verbiage was "tweaked" in innumerable ways. These global stylistic changes are summarized and explained in more detail in the 2024 Advisory Committee comments that appear following **Rule 1001**.

Amended Rules 1007, 7001 and New Rule 8023.1

Of the non-stylistic changes in 2024, three warrant special mention—revised Rules 1007 and 7001 and new Rule 8023.1:

Rule 1007(b)(7) was amended to require a debtor to submit the course certificate from the debtor education requirement in the Bankruptcy Code. This requirement is related to the abrogation of former Official Form 423 that had been used by the debtor to show completion of the required pre-bankruptcy course. Conforming amendments were made to the following rules by replacing the word "statement" with "certificate": Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2). See § **1007:4**.

Rule 7001(a) was amended to exempt from the list of adversary proceedings "a proceeding by an individual debtor to recover tangible personal property under § 542(a)." The drafters commentary says that "[a]n individual debtor may need to obtain the prompt return from a third party of tangible personal property—such as an automobile or tools of the trade—in order to produce income to fund a plan or to regain the use of property that may be exempted." This is an important response to the Supreme Court's 2021 decision in *City of Chicago v. Fulton*, which required compliance in many cases with the more elaborate procedures applicable to adversary proceedings and therefore may have been too time-consuming for such a debtor, who can now proceed by motion to require turnover of such property under subsection 542(a), triggering only the procedures of Rule 9014. Unintended consequences of this revision of Rule 7001 may arise from the fact that it only provides for a motion by an individual debtor. It may thus implicitly call into question the self-executing nature of 11 U.S.C.A. § 542(a). See § **7001:1**.

Rule 8023.1 is a new rule on the substitution of parties modeled on Fed. R. App. P. 43. Neither Fed. R. App. P. 43 nor Fed. R. Civ. P. 25 is applicable to parties in bankruptcy appeals to the district court or bankruptcy appellate panel, and this new rule is intended to fill that gap. See § **8023.1:1**.

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*Revised Rules 1007, 4004, 5009, 7001 and 9006 and New Rule 8023.1—
All Changes, Blacklined*

The substantive December 1, 2024 revisions appear below, with new material underlined and omitted matter lined through. The changes indicated are to the restyled versions of the rules. The Committee Notes that follow the rules in the main volume describe both restyling and substantive changes.

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time to File

(b) Schedules, Statements, and Other Documents.

(7) *Personal Financial-Management Course*. Unless an approved provider has notified the court that the debtor has completed a course in personal financial management after filing the petition or the debtor is not required to complete one as a condition to discharge, an individual debtor in a Chapter 7 or Chapter 13 case—or in a Chapter 11 case in which § 1141(d)(3) applies—must file a statement that such a course has been completed (Form 423) certificate of course completion issued by the provider.

(c) Time to File.

(4) *Financial-Management Course*. Unless the court extends the time to file, an individual debtor must file the statement certificate required by (b)(7) as follows:

(A) in a Chapter 7 case, within 60 days after the first date set for the meeting of creditors under § 341; and

(B) in a Chapter 11 or Chapter 13 case, no later than the date the last payment is made under the plan, or the date a motion for a discharge is filed under § 1141(d)(5)(B) or § 1328(b).

Rule 4004. Granting or Denying a Discharge

(c) Granting a Discharge.

(1) *Chapter 7*. In a Chapter 7 case, when the times to object to discharge and to file a motion to dismiss the case under Rule 1017(e) expire, the court must promptly grant the discharge—except under these circumstances:

(H) the debtor has not filed a statement certificate showing that a course on personal financial management has been completed—if such a statement certificate is required by Rule 1007(b)(7);

(4) *Individual Chapter 11 or Chapter 13 Case.* In a Chapter 11 case in which the debtor is an individual—or in a Chapter 13 case—the court must not grant a discharge if the debtor has not filed a statement certificate required by Rule 1007(b)(7).

Rule 5009. Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied

Chapter 7 or 13—Notice of a Failure to File a Statement About Completing Certificate of Completion for a Course on Personal Financial Management.

This subdivision (b) applies if an individual debtor in a Chapter 7 or 13 case is required to file a statement certificate under Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a). The clerk must promptly notify the debtor that the case will be closed without entering a discharge if the statement certificate is not filed within the time prescribed by Rule 1007(c).

Rule 7001. Types of Adversary Proceedings

An adversary proceeding is governed by the rules in this Part VII. The following are adversary proceedings:

(a) a proceeding to recover money or property—except a proceeding to compel the debtor to deliver property to the trustee, a proceeding by an individual debtor to recover tangible personal property under § 542(a), or a proceeding under § 554(b), § 725, Rule 2017, or Rule 6002;

Rule 8023.1. Substitution of Parties

(a) Death of a Party.

(1) *After a Notice of Appeal Is Filed.* If a party dies after a notice of appeal has been filed or while a proceeding is pending on appeal in the district court or BAP, the decedent's personal representative may be substituted as a party on motion filed with that court's clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 8011. If the decedent has no representative, any party may suggest the death on the record, and the appellate court may then direct appropriate proceedings.

(2) *Before a Notice of Appeal Is Filed—Potential Appellant.* If a party entitled to appeal dies before filing notice of appeal, the decedent's personal representative—or, if there is no personal representative, the decedent's attorney of record—may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with (1).

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(3) *Before a Notice of Appeal Is Filed—Potential Appellee.* If a party against whom an appeal may be taken dies after entry of a judgment or order in the bankruptcy court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with (1).

(b) Substitution for a Reason Other Than Death.

If a party needs to be substituted for any reason other than death, the procedure prescribed in (a) applies.

(c) Public Officer: Identification; Substitution.

(1) *Identification of a Party.* A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the appellate court may require the public officer's name to be added.

(2) *Automatic Substitution of an Officeholder.* When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. Subject to Rule 2012, the public officer's successor is automatically substituted as a party. Proceedings after the substitution are to be in the name of the substituted party, but any misnomer that does not affect the parties' substantial rights may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

Rule 9006. Computing and Extending Time; Motions

(b) Extending Time.

(3) *Extensions Governed by Other Rules.* The court may extend the time to:

(B) file the ~~statement~~ certificate required by Rule 1007(b)(7), and the schedules and statements in a small business case under § 1116(3)—but only as permitted by Rule 1007(c).

(c) Reducing Time Limits.

(2) *When Not Permitted.* The court may not reduce the time to act under Rule 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2) or (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, or 9033(b). Also, the court may not reduce the time set by Rule 1007(c) to file the ~~statement~~ certificate required by Rule 1007(b)(7).

Amendments to Rule 12, Federal Rules of Civil Procedure—Effective December 1, 2024

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading.

~~(1) In General.~~ Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(1) In General.

(A) A defendant must serve an answer:

U.S. Supreme Court—Recent Cases of Interest

The Supreme Court’s decisions of most interest to bankruptcy practitioners are summarized below and analyzed in more detail in the context of applicable rules throughout this work.

Office of United States Trustee v. John Q. Hammons Fall 2006, LLC, ___ U.S. ___, 144 S. Ct. 1588 (2024). The Supreme Court granted the United States’ petition for a writ of *certiorari* to address the questions unresolved in the Court’s 2022 *Siegel v. Fitzgerald* decision: What is the remedy for the fee discrepancy ruled unconstitutional in *Siegel*? Are Chapter 11 debtors entitled to refunds for overpayment of fees for the U.S. Trustee System? The Court held that the appropriate remedy for the short-lived and small disparity created by the bankruptcy fee statute’s being held unconstitutional, was prospective parity, not a refund or retrospective raising of fees. See § 2015:1.

Truck Insurance Exchange v. Kaiser Gypsum Company, 602 U.S. 268, 144 S. Ct. 1414 (2024). The Supreme Court held that an insurer with financial responsibility for a bankruptcy claim is a “party in interest” that may raise and be heard on any issue in a Chapter 11 case, including an objection to a proposed plan of reorganization. See § 2018:1.

Harrington v. Purdue Pharma, L.P., 603 U.S. ----, 144 S. Ct. 2071 (2024). The Supreme Court held that the Bankruptcy Code does not authorize a bankruptcy court to approve, as part of a plan of reorganization under Chapter 11, a release and injunction that extinguishes claims against non-debtor third parties without the consent of affected claimants, which the Court said would otherwise effectively extend to non-debtors the benefits of the discharge usually reserved for debtors, abrogating decisions on the issue in the Third, Sixth, Seventh and Eleventh Circuit. See § 7065:9.

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November 1, 2024