PRELIMINARY DRAFT

Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and the Federal Rules of Evidence

Request for Comments on Amendments to:

Appellate Rule	15
Bankruptcy Rule	2002 Official Forms 101 and 106C
Civil Rules	7.1, 26, 41, 45, and 81
Criminal Rule	17
Evidence Rules	609 and 707

Written Comments Due By
February 16, 2026

Prepared by the
Committee on Rules of Practice and Procedure
Judicial Conference of the United States
August 2025

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MEMORANDUM

TO: The Bench, Bar, and Public

FROM: Honorable John D. Bates, Chair
Committee on Rules of Practice and Procedure

DATE: August 15, 2025

RE: Request for Comments on Proposed Amendments to Federal Rules and Forms

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The Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee) has approved for publication and public comment the following proposed amendments to existing rules and forms, as well as one new rule:

- Appellate Rule 15;
- Bankruptcy Rule 2002 and Official Forms 101 and 106C;
- Civil Rules 7.1, 26, 41, 45, and 81;
- Criminal Rule 17; and
- Evidence Rule 609 and new Rule 707.

The proposals, supporting materials, and instructions on submitting written comments are posted on the Judiciary's website at:

https://www.uscourts.gov/forms-rules/proposed-amendments-published-public-comment

Opportunity to Submit Written Comments

Comments concerning the proposals must be submitted electronically no later than **February 16, 2026**. Please note that comments are part of the official record and publicly available.

Opportunity to Appear at Public Hearings

On the following dates, the advisory committees will conduct virtual public hearings on the proposals:

- Appellate Rules on January 16, 2026, and February 6, 2026;
- Bankruptcy Rules on January 23, 2026, and January 30, 2026;
- Civil Rules on January 13, 2026, and January 27, 2026;
- Criminal Rules on January 22, 2026 and February 5, 2026; and
- Evidence Rules on January 15, 2026, and January 29, 2026.

If you wish to appear and present testimony regarding a proposed rule or form, you must notify the office of Rules Committee Staff **at least 30 days before the scheduled hearing** by emailing RulesCommittee_Secretary@ao.uscourts.gov. Hearings are subject to cancellation or consolidation based on the number of requests to testify.

At this time, the Standing Committee has only approved the proposals for publication and comment. After the public comment period closes, all comments will be carefully considered by the relevant advisory committee as part of its consideration of whether to proceed with a proposal.

Under the Rules Enabling Act, 28 U.S.C. §§ 2072-2077, if any of the published proposals are later approved, with or without revision, by the relevant advisory committee, the next steps are approval by the Standing Committee and the Judicial Conference, and then adoption by the Supreme Court. If adopted by the Court and transmitted to Congress by May 1, 2027, absent congressional action, the proposals would take effect on December 1, 2027.

If you have questions about the rulemaking process or pending rules amendments, please contact the Rules Committee Staff at 202-502-1820 or visit https://www.uscourts.gov/forms-rules.

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Excerpt from the May 16, 2025 Report of the Advisory Committee on Appellate Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Allison Eid, Chair
Advisory Committee on Appellate Rules

RE: Report of the Advisory Committee on Appellate Rules

DATE: May 16, 2025

I. Introduction

The Advisory Committee on Appellate Rules met on Wednesday, April 2, 2025, in Atlanta, Georgia. * * *

The Advisory Committee has several action items for the June 2025 meeting.

* * * * *

III. Item for Publication

A. "Incurably Premature"—Rule 15 (24-AP-G)

The Advisory Committee seeks publication of a proposed amendment to remove a potential trap for the unwary in Rule 15. The "incurably premature" doctrine holds that if a motion to reconsider an agency decision makes that decision unreviewable in the court of appeals, then a petition to review that agency decision is not just held in the court of appeals awaiting the agency's decision on the motion to reconsider. Instead, the petition for review is dismissed, and a new petition for review must be filed after the agency decides the motion to reconsider.

Rule 4, dealing with appeals from district court judgments, used to work in a similar way regarding various post-judgment motions. But in 1993, Rule 4 was amended to provide that such a premature notice of appeal becomes effective when the post-judgment motion is decided. The proposal is to do for Rule 15 what was done for Rule 4.

A similar suggestion was considered about twenty-five years ago. But it was dropped due to the strong opposition of the D.C. circuit judges who were active at the time. The Advisory Committee has been informed that there is no large opposition from D.C. Circuit judges at this point and that technological innovations have alleviated the concerns that were raised in the past. Judges may, however, have concerns with particular aspects of the proposal.

The proposed amendment to Rule 15 is like the existing Rule 4, but it reflects the party-specific nature of appellate review of administrative decisions, in contrast to the usually case-specific nature of civil appeals. As with civil appeals, the proposed amendment to Rule 15 would require a party that wants to challenge the result of agency reconsideration to file a new or amended petition.

The proposed amendment does not, however, attempt to align its language with the Multicircuit Petition Statute, 28 U.S.C. § 2112. First, the phrase used in § 2112(a)(1) is "issuance of the order." Courts of appeals have different views as to what counts as "issuance" of an order, so including the term "issuance" invites importing that dispute into the rule. Second, the point of this proposal is to save a premature petition for review that would otherwise be dismissed due to the failure of the petitioner to file a second petition. A petitioner whose premature petition is saved by this proposal is not in much of a position to complain that the petition might be heard in a circuit other than their preferred circuit. Third, a petitioner seeking to participate in the multicircuit lottery will already be paying close attention to such procedural details as when a petition must be time-stamped by the court and delivered to the agency.

One member sought to limit the benefit of the rule to "timely" petitions. But others were troubled by the idea of describing a petition as both premature (too early) and untimely (too late), particularly since the proposed rule operates in a party-specific way. The motion failed for want of a second.

The Advisory Committee unanimously asks the Standing Committee to publish the accompanying proposed amendment to Rule 15 for public comment.

* * * * *

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE[1]

Rule 15. Review or Enforcement of an Agency Order—How Obtained; Intervention

* * * * *

(d) Premature Petition or Application. This subdivision (d) applies if a party files a petition for review or an application to enforce after an agency announces or enters its order—but before the agency disposes of any petition for rehearing, reopening, or reconsideration that renders the order nonreviewable as to that party. The premature petition or application becomes effective to seek review or enforcement of the order when the agency disposes of the last such petition for rehearing, reopening, or reconsideration. If a party intends to challenge the disposition of a petition for rehearing, reopening, or reconsideration,

[1] New material is underlined in red; matter to be omitted is lined through.

the party must file a new or amended petition for review or application to enforce in compliance with this Rule 15.

(e)~~(d)~~ **Intervention.** Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion—or other notice of intervention authorized by statute—must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(f)~~(e)~~ **Payment of Fees.** When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

Committee Note

Subdivision (d). Subdivision (d) is new. It is designed to eliminate a procedural trap. Some circuits hold that petitions for review of agency orders that have been rendered non-reviewable by the filing of a petition for

rehearing (or similar petition) are "incurably premature," meaning that they do not ripen or become valid after the agency disposes of the rehearing petition. *See, e.g., Nat'l Ass'n of Immigration Judges v. Fed. Labor Relations Auth.*, 77 F.4th 1132, 1139 (D.C. Cir. 2023); *Aeromar, C. Por A. v. Dept. of Transp*., 767 F.2d 1491, 1493 (11th Cir. 1985) (relying on the pre-1993 treatment of notices of appeal and applying the "same principle" to review of agency action). In these circuits, if a party aggrieved by an agency action does not file a second timely petition for review after the petition for rehearing is denied by the agency, that party will find itself out of time: Its first petition for review will be dismissed as premature, and the deadline for filing a second petition for review will have passed. Subdivision (d) removes this trap.

It is modeled after Rule 4(a)(4)(B)(i), as amended in 1993, and is intended to align the treatment of premature petitions for review of agency orders with the treatment of premature notices of appeal. Recognizing that while review of district court orders is generally case based, *see* Fed. R. Civ. P. 54, review of administrative orders is generally party based, subdivision (d) refers to an order that is made "non-reviewable as to that party" by a petition for rehearing, reopening, or reconsideration.

Subdivision (d) does not address whether or when the filing of a petition for rehearing, reopening, or reconsideration renders an agency order non-reviewable as to a party. That is left to the wide variety of statutes, regulations, and judicial decisions that govern agencies and appeals from agency decisions. Rather, subdivision (d) provides that when, under governing law, an agency order is non-reviewable as to a particular party because of the filing of a petition for rehearing, reopening, or reconsideration, a premature petition for review or application to enforce that

order will be held in abeyance and become effective when the agency disposes of the last such petition—that is, the last petition that renders the order non-reviewable as to that party.

As with appeals in civil cases, *see* Rule 4(a)(4)(B)(ii), the premature petition becomes effective to review the original decision, but a party intending to challenge the disposition of a petition for rehearing, reopening, or reconsideration must file a new or amended petition for review or application to enforce.

Subsequent subdivisions are re-lettered.

Excerpt from the December 4, 2024 Report of the Advisory Committee on Bankruptcy Rules (revised August 1, 2025)

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Rebecca B. Connelly, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: December 4, 2024

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Washington, D.C., on September 12, 2024. * * *

At the meeting the Advisory Committee voted to seek publication for comment of proposed amendments to Bankruptcy Rule 2002(o) (Notices) and Official Bankruptcy Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy).

Part II of this report presents those action items.

* * * * *

Excerpt from the December 4, 2024 Report of the Advisory Committee on Bankruptcy Rules (revised August 1, 2025)

II. Action Items

Items for Publication

The Advisory Committee recommends that the following rule and form amendments be published for public comment in August 2025. Bankruptcy Appendix B includes the rule and form that are in this group.

Action Item 1. Rule 2002 (Notices). The first sentence of Rule 2002(o) currently reads: "The caption of a notice given under this Rule 2002 must conform to Rule 1005." The clerk of court for the Bankruptcy Court for the District of Minnesota submitted a suggestion—in which clerks for 8 other bankruptcy courts in the Eighth Circuit joined—that this rule be amended to eliminate the requirement that the caption of every notice given under Rule 2002 comply with Rule 1005. The Bankruptcy Clerks Advisory Group submitted a second suggestion supporting the first one.

Rule 1005 specifies the information that the caption of a bankruptcy petition must contain. Five items of information about the debtor are required, including "the last 4 digits of the social-security number or individual taxpayer identification number." If someone other than the debtor files the petition, the rule also requires that the caption include "all names that the petitioner knows have been used by the debtor."

The clerks of court state that the caption requirements "are substantial and can add a significant amount of length, and therefore cost, to a Rule 2002 notice." They also note that, despite the requirements of Rule 2002(n)[*], the "general long-standing practice for the bankruptcy courts in the Eighth Circuit is to only provide the Rule 1005 caption requirements on the Notice of Bankruptcy Case [Official Forms 309A-309I]." Thereafter, the clerk's office uses a shorter caption that "generally follows Official Form 416B." Official Form 416B includes a caption setting forth the court's name, the debtor's name, the case number, the chapter under which the case was filed, and a brief designation of the document's character.

At the request of the Advisory Committee, the Federal Judicial Center surveyed bankruptcy clerks regarding the suggestion, and they overwhelmingly supported eliminating the requirement of a full Rule 1005 caption for all notices under Rule 2002. Members of the Advisory Committee also favored reducing the number of documents containing the last 4 digits of the debtor's social security number.

Accordingly, the Advisory Committee approved for publication a proposed amendment to Rule 2002(o) that would provide that the caption of a notice given under Rule 2002 must include the information that Official Form 416B requires. The caption of a debtor's notice to a creditor would continue to also require inclusion of the information that § 342(c) requires.

The Advisory Committee recommends that the amended Rule 2002(o) be published for public comment.

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[*] Rule 2002(n) became 2002(o) as part of the restyling project.

Excerpt from the December 4, 2024 Report of the Advisory Committee on Bankruptcy Rules
(revised August 1, 2025)

Action Item 2. Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy). The Advisory Committee received a suggestion from the clerk of court for the Bankruptcy Court for the District of Maryland. He suggested a modification of the prompt for Question 4 in Part 1 of Official Form 101. Currently the question asks for "Your Employer Identification Number (EIN), if any." Some pro se debtors are providing the employer identification number of their employers, not realizing that the question is attempting to elicit the EIN of the individual filing for bankruptcy if that individual is himself or herself an employer. Because multiple debtors who have the same employer may file and list that employer's EIN, the CM/ECF monitoring for repeat filings triggers a report erroneously suggesting that the debtor is not eligible because of prior filings. The proposed amendment would modify the language to read as follows:

> "EIN (Employer Identification Number) issued to you, if any.
>
> Do NOT list the EIN of any separate legal entity such as your employer, a corporation, partnership, or LLC that is not filing this petition."

The Advisory Committee approved the proposed amendment for publication for public comment.

* * * * *

Excerpt from the May 12, 2025 Report of the Advisory Committee on Bankruptcy Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Rebecca B. Connelly, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 12, 2025

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Atlanta on April 3, 2025. * * *

* * * * *

The Advisory Committee also voted to seek publication for comment of proposed amendments to Official Form 106C (Schedule C: The Property You Claim as Exempt).

Part II of this report presents those action items. They are organized as follows:

* * * * *

B. Item for Publication

- Official Form 106C.

* * * * *

II. Action Items

* * * * *

B. Item for Publication

The Advisory Committee recommends that the following form amendment be published for public comment in August 2025. * * *

Action Item 7. Official Form 106C (Schedule C: The Property You Claim as Exempt). The Advisory Committee received a suggestion from a chapter 12 and chapter 13 trustee to amend Official Form 106C to include a total amount of assets being claimed exempt. Section 589b(d)(3) of title 28 requires the uniform final report submitted by trustees to total the "assets exempted." Without the amount totaled on the form, trustees must manually add up the amounts on each form to prepare the required final report.

Official Form 106C was revised in 2015 in response to the Supreme Court's decision in *Schwab v. Reilly*, 560 U.S. 770 (2010), which stated that a debtor could list as the exempt value of an asset on Schedule C "'full fair market value (FMV)' or '100% of FMV,'" rather than a specific dollar amount. So now there are two options on the form under the column for "Amount of the exemption you claim": a specific dollar amount and "100% of fair market value, up to any applicable statutory limit." Because of that unspecified dollar option, no total amount of claimed exemptions is asked for.

The U.S. Trustee Program has promulgated a regulation pursuant to 28 U.S.C. 589b(d) regarding the completion of forms for the trustee's final report. *See* 28 C.F.R. 58.7. The regulation sets forth a list of items to be included in the trustee's distribution report, including "assets exempted."

The statute does not explain "assets exempted." But the U.S. Trustee Program addressed this issue in response to comments received to the proposed regulation. In the interest of setting a uniform standard that is reasonable and would not require the trustee to expend significant additional resources, the Executive Office for U.S. Trustees ("EOUST") defined "assets exempted" as the total value of assets listed as exempt on the debtor's Schedule C, unless revised pursuant to a court order. The instructions to the final reports reflect this definition and note that 28 U.S.C. § 589b(c) requires the rule to "strike the best achievable practical balance between (1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system, (2) economy, simplicity, and lack of undue burden on persons with a duty to file these reports, and (3) appropriate privacy concerns and safeguards."

Guided by this information, the Advisory Committee understood that assets claimed as exempt on Form 106C are treated as "assets exempted" for purposes of the trustee's final report,

subject to any subsequent amendments or revisions pursuant to a court order. It also reasoned that, in light of the EOUST's "attempt[] to balance the reasonable needs of the public for information with the need not to unduly burden the standing trustees who must file the final reports," adding up and reporting just the specific dollar amounts claimed is acceptable. As a result, the Advisory Committee is proposing for publication an amendment to Form 106C to provide a total of the specific-dollar exemption amounts. It also approved for publication the addition of a space on the form for the total value of the debtor's interest in property for which exemptions are claimed.

* * * * *

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE[1]

Rule 2002. Notices

* * * * *

(o) Caption. The caption of a notice given under this Rule 2002 must ~~conform to Rule 1005~~ include the information that Form 416B requires. The caption of a debtor's notice to a creditor must also include the information that § 342(c) requires.

* * * * *

Committee Note

The amendment to Rule 2002(o) eliminates the requirement that all notices given under Rule 2002 include the caption required for the bankruptcy petition under Rule 1005. That caption requires, among other things, the debtor's employer-identification number, last four digits of the debtor's social security number or individual debtor's taxpayer-identification number, any other federal taxpayer-identification number, and all other names used within eight years before filing the petition. Instead, most Rule 2002 notices may use the caption described in Official Form 416B, which requires only the court's name, the name

[1] New material is underlined in red; matter to be omitted is lined through.

of the debtor, the case number, the chapter under which the case was filed, and a brief description of the document's character. Rule 2002 notices sent by the debtor must also include the information that § 342(c) of the Code requires. The notice of the meeting of creditors, Rule 2002(a)(1), will continue to include all information required by Official Forms 309(A-I).

Fill in this information to identify your case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (*If known*): _____

Chapter you are filing under:
- ❑ Chapter 7
- ❑ Chapter 11
- ❑ Chapter 12
- ❑ Chapter 13

❑ Check if this is an amended filing

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy 12/26

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
1. Your full name Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)
2. All other names you have used in the last 8 years Include your married or maiden names and any assumed, trade names and *doing business as* names. Do NOT list the name of any separate legal entity such as a corporation, partnership, or LLC that is not filing this petition.	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name _____ Business name (if applicable) _____ Business name (if applicable)	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name _____ Business name (if applicable) _____ Business name (if applicable)
3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)	xxx – xx – ____ ____ ____ ____ OR **9** xx – xx – ____ ____ ____ ____	xxx – xx – ____ ____ ____ ____ OR **9** xx – xx – ____ ____ ____ ____

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
4. EIN (Employer Identification Number) issued to you, if any. Do NOT list the EIN of any separate legal entity such as your employer, a corporation, partnership, or LLC that is not filing this petition.	__ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __ EIN	__ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __ EIN
5. Where you live	_____ Number Street _____ _____ City State ZIP Code _____ County **If your mailing address is different from the one above, fill it in here.** Note that the court will send any notices to you at this mailing address. _____ Number Street _____ P.O. Box _____ City State ZIP Code	**If Debtor 2 lives at a different address:** _____ Number Street _____ _____ City State ZIP Code _____ County **If Debtor 2's mailing address is different from yours, fill it in here.** Note that the court will send any notices to this mailing address. _____ Number Street _____ P.O. Box _____ City State ZIP Code
6. Why you are choosing *this district* to file for bankruptcy	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.) _____ _____ _____ _____	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.) _____ _____ _____ _____

Part 2: Tell the Court About Your Bankruptcy Case

7. The chapter of the Bankruptcy Code you are choosing to file under

Check one. (For a brief description of each, see *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form 2010)). Also, go to the top of page 1 and check the appropriate box.

- ❑ Chapter 7
- ❑ Chapter 11
- ❑ Chapter 12
- ❑ Chapter 13

8. How you will pay the fee

- ❑ **I will pay the entire fee when I file my petition**. Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
- ❑ **I need to pay the fee in installments**. If you choose this option, sign and attach the *Application for Individuals to Pay The Filing Fee in Installments* (Official Form 103A).
- ❑ **I request that my fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.

9. Have you filed for bankruptcy within the last 8 years?

- ❑ No
- ❑ Yes. District _____ When _____ Case number _____
  MM / DD / YYYY
  District _____ When _____ Case number _____
  MM / DD / YYYY
  District _____ When _____ Case number _____
  MM / DD / YYYY

10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?

- ❑ No
- ❑ Yes. Debtor _____ Relationship to you _____
  District _____ When _____ Case number, if known_____
  MM / DD / YYYY
  Debtor _____ Relationship to you _____
  District _____ When _____ Case number, if known_____
  MM / DD / YYYY

11. Do you rent your residence?

- ❑ No. Go to line 12.
- ❑ Yes. Has your landlord obtained an eviction judgment against you?
  - ❑ No. Go to line 12.
  - ❑ Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it as part of this bankruptcy petition.

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

- ❑ No. Go to Part 4.
- ❑ Yes. Name and location of business

_____
Name of business, if any

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Check the appropriate box to describe your business:

- ❑ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ❑ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ❑ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ❑ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ❑ None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code, and are you a *small business debtor*

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

- ❑ No. I am not filing under Chapter 11.
- ❑ No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.
- ❑ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I do not choose to proceed under Subchapter V of Chapter 11.
- ❑ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I choose to proceed under Subchapter V of Chapter 11.

Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

- ❑ No
- ❑ Yes. What is the hazard? _____

_____

If immediate attention is needed, why is it needed? _____

_____

Where is the property? _____
Number Street

_____

_____ _____ _____
City State ZIP Code

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling

15. Tell the court whether you have received a briefing about credit counseling.

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

❑ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

❑ **I am not required to receive a briefing about credit counseling because of:**

- ❑ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ❑ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ❑ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):

You must check one:

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

❑ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

❑ **I am not required to receive a briefing about credit counseling because of:**

- ❑ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ❑ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ❑ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?

16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

- ❑ No. Go to line 16b.
- ❑ Yes. Go to line 17.

16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

- ❑ No. Go to line 16c.
- ❑ Yes. Go to line 17.

16c. State the type of debts you owe that are not consumer debts or business debts.

_____

17. Are you filing under Chapter 7?

Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

- ❑ No. I am not filing under Chapter 7. Go to line 18.
- ❑ Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?
  - ❑ No
  - ❑ Yes

18. How many creditors do you estimate that you owe?

- ❑ 1-49
- ❑ 50-99
- ❑ 100-199
- ❑ 200-999
- ❑ 1,000-5,000
- ❑ 5,001-10,000
- ❑ 10,001-25,000
- ❑ 25,001-50,000
- ❑ 50,001-100,000
- ❑ More than 100,000

19. How much do you estimate your assets to be worth?

- ❑ $0-$50,000
- ❑ $50,001-$100,000
- ❑ $100,001-$500,000
- ❑ $500,001-$1 million
- ❑ $1,000,001-$10 million
- ❑ $10,000,001-$50 million
- ❑ $50,000,001-$100 million
- ❑ $100,000,001-$500 million
- ❑ $500,000,001-$1 billion
- ❑ $1,000,000,001-$10 billion
- ❑ $10,000,000,001-$50 billion
- ❑ More than $50 billion

20. How much do you estimate your liabilities to be?

- ❑ $0-$50,000
- ❑ $50,001-$100,000
- ❑ $100,001-$500,000
- ❑ $500,001-$1 million
- ❑ $1,000,001-$10 million
- ❑ $10,000,001-$50 million
- ❑ $50,000,001-$100 million
- ❑ $100,000,001-$500 million
- ❑ $500,000,001-$1 billion
- ❑ $1,000,000,001-$10 billion
- ❑ $10,000,000,001-$50 billion
- ❑ More than $50 billion

Part 7: Sign Below

For you

I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct.

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11,12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both.
18 U.S.C. §§ 152, 1341, 1519, and 3571.

✘ _____
Signature of Debtor 1

Executed on _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Executed on _____
MM / DD / YYYY

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

✘ _____ Date _____
Signature of Attorney for Debtor MM / DD / YYYY

_____
Printed name

_____
Firm name

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Contact phone _____ Email address _____

_____ _____
Bar number State

For you if you are filing this bankruptcy without an attorney

If you are represented by an attorney, you do not need to file this page.

The law allows you, as an individual, to represent yourself in bankruptcy court, but **you should understand that many people find it extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, you are strongly urged to hire a qualified attorney.**

To be successful, you must correctly file and handle your bankruptcy case. The rules are very technical, and a mistake or inaction may affect your rights. For example, your case may be dismissed because you did not file a required document, pay a fee on time, attend a meeting or hearing, or cooperate with the court, case trustee, U.S. trustee, bankruptcy administrator, or audit firm if your case is selected for audit. If that happens, you could lose your right to file another case, or you may lose protections, including the benefit of the automatic stay.

You must list all your property and debts in the schedules that you are required to file with the court. Even if you plan to pay a particular debt outside of your bankruptcy, you must list that debt in your schedules. If you do not list a debt, the debt may not be discharged. If you do not list property or properly claim it as exempt, you may not be able to keep the property. The judge can also deny you a discharge of all your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Individual bankruptcy cases are randomly audited to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined and imprisoned.**

If you decide to file without an attorney, the court expects you to follow the rules as if you had hired an attorney. The court will not treat you differently because you are filing for yourself. To be successful, you must be familiar with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of the court in which your case is filed. You must also be familiar with any state exemption laws that apply.

Are you aware that filing for bankruptcy is a serious action with long-term financial and legal consequences?

- ❑ No
- ❑ Yes

Are you aware that bankruptcy fraud is a serious crime and that if your bankruptcy forms are inaccurate or incomplete, you could be fined or imprisoned?

- ❑ No
- ❑ Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out your bankruptcy forms?

- ❑ No
- ❑ Yes. Name of Person_____.
  Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

By signing here, I acknowledge that I understand the risks involved in filing without an attorney. I have read and understood this notice, and I am aware that filing a bankruptcy case without an attorney may cause me to lose my rights or property if I do not properly handle the case.

✘ _____	✘ _____
Signature of Debtor 1	Signature of Debtor 2
Date _____ MM / DD / YYYY	Date _____ MM / DD / YYYY
Contact phone _____	Contact phone _____
Cell phone _____	Cell phone _____
Email address _____	Email address _____

Committee Note

Question 4 has been amended to make it clear that only debtors who themselves have an employer identification number (EIN) should list it; they should not include the EIN of their employer or any other entity not filing the petition.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number (If known) _____

☐ Check if this is an amended filing

Official Form 106C

Schedule C: The Property You Claim as Exempt

12/26

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Using the property you listed on *Schedule A/B: Property* (Official Form 106A/B) as your source, list the property that you claim as exempt. If more space is needed, fill out and attach to this page as many copies of *Part 2: Additional Page* as necessary. On the top of any additional pages, write your name and case number (if known).

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. One way of doing so is to state a specific dollar amount as exempt. Alternatively, you may claim the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Some exemptions—such as those for health aids, rights to receive certain benefits, and tax-exempt retirement funds—may be unlimited in dollar amount. However, if you claim an exemption of 100% of fair market value under a law that limits the exemption to a particular dollar amount and the value of the property is determined to exceed that amount, your exemption would be limited to the applicable statutory amount.

Part 1: Identify the Property You Claim as Exempt

1. **Which set of exemptions are you claiming?** *Check one only, even if your spouse is filing with you.*
   - ☐ You are claiming state and federal nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3)
   - ☐ You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. **For any property you list on *Schedule A/B* that you claim as exempt, fill in the information below.**

A. Brief description of the property and line on *Schedule A/B* that lists this property	**B.** Current value of the portion you own Copy the value from *Schedule A/B*	**C.** Amount of the exemption you claim *Check only one box for each exemption.*	**D.** Specific laws that allow exemption
Brief description: _____ Line from *Schedule A/B:* _____	$_____	☐ $ _____ ☐ 100% of fair market value, up to any applicable statutory limit	_____
Brief description: _____ Line from *Schedule A/B:* _____	$_____	☐ $ _____ ☐ 100% of fair market value, up to any applicable statutory limit	_____
2.1 **Add the dollar value of all entries from Column B, including any entries for pages you have attached.**	$_____		
2.2 **Add the dollar value of all entries with a specific amount from Column C, including any entries for pages you have attached.**		$_____	

3. **Are you claiming a homestead exemption of more than $214,000?**
   (Subject to adjustment on 4/01/28 and every 3 years after that for cases filed on or after the date of adjustment.)
   - ☐ No
   - ☐ Yes. Did you acquire the property covered by the exemption within 1,215 days before you filed this case?
     - ☐ No

❑ Yes

Part 2: Additional Page

A. Brief description of the property and line on Schedule A/B that lists this property	B. Current value of the portion you own Copy the value from *Schedule A/B*	C. Amount of the exemption you claim *Check only one box for each exemption*	D. Specific laws that allow exemption
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________
Brief description: ____________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	____________

Committee Note

Part 1 of Official Form 106C is amended to add spaces for providing the total amount of column B—current value of the portion of property owned by the debtor—and of column C—amount of the exemption claimed. In adding up the exemption amounts claimed in column C, the debtor should include only those exemptions claimed in specific dollar amounts.

Excerpt from the December 13, 2024 Report of the Advisory Committee on Civil Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Robin L. Rosenberg, Chair
Advisory Committee on Civil Rules

RE: Report of the Advisory Committee on Civil Rules

DATE: December 13, 2024

Introduction

The Civil Rules Advisory Committee met in Washington, D.C., on October 10, 2024. Members of the public attended in person, and public on-line attendance was also provided. * * *

Part I of this report will present * * * action items. During its October 10 meeting, the Advisory Committee voted to recommend publication in August 2025 of amendments to * * * rules:

(a) Rule 81(c): The Advisory Committee proposes publication of an amendment to Rule 81(c) that clarifies when a jury demand must be made after removal if no jury demand has been made at the time of removal.

* * * * *

Excerpt from the December 13, 2024 Report of the Advisory Committee on Civil Rules

I. ACTION ITEMS

(a) Rule 81(c) -- jury demand after removal

The Standing Committee first saw this issue at its June 2016 meeting, based on submission 15-CV-A, from a lawyer who interpreted restyled Rule 81(c) to mean that he did not need to demand a jury trial in his removed case because state practice did not require that he make such a demand prior to the time of removal. Before 2007, Rule 81(c) said: "If state law *does* not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time." In the 2007 restyling the verb was changed to "did."

That change could produce confusion when a case is removed from a state court that has a jury demand requirement but permits that demand later in the litigation. As written before 2007, the rule excused a jury demand only when the case was removed from a state court that *never* requires a jury demand.

When this matter came before the Standing Committee in 2016, two members of the Committee proposed an alternative that would have mooted the Rule 81(c) concern -- that Rule 38 be amended (parallel with the analogous Criminal Rule) to direct that there always be a jury trial unless both parties consented to a court trial and the court agreed to hold a court trial. That proposal led to an FJC research study that eventually persuaded the Advisory Committee that making such a change to Rule 38 would not be warranted. So the Rule 38 proposal was dropped from the agenda and the Rule 81(c) proposal came back to the fore.

It seems that the former provision exempting parties accustomed to state courts that don't ever require a jury demand unless the court establishes a deadline may have been meant to protect them against losing the right to a jury trial because they assumed they did not have to take any action after removal to obtain a jury trial since that would not be required in the state court.

It is not entirely clear how many states provide a jury trial without requiring a demand at some point. Research by the Rules Law Clerk indicates that there seem to be some such states and that there is considerable variety in the timing requirements of state courts that don't entirely excuse jury demands. * * *

During the Advisory Committee meeting, two possible amendments were proposed. One would simply change the verb tense from "did" back to what the rule said before 2007 -- "does." That could avoid confusing lawyers who faced very prompt removal. At least they would know that they were not exempt from demanding a jury trial after removal because the state court case had not reached the point where that was required by state court practice.

But that solution could leave uncertainty about whether a given state practice "does" require a jury demand. The Rules Law Clerk research suggests that such uncertainty might exist in some instances.

On the other hand, lawyers who never had to demand a jury trial to get one in state court might be surprised to find that they had to make a formal jury demand in federal court.

The Advisory Committee chose the other alternative -- requiring a jury demand in all removed cases by the deadline set in Rule 38. One point raised during the Oct. 10 meeting was that it be made clear that even when a party fails to meet the Rule 38 deadline the court may, under Rule 39(b), order a jury trial despite the belated request.

So the Advisory Committee unanimously voted to propose that the following draft Rule 81(c) amendment and Committee Note be published for public comment: * * *

* * * * *

Excerpt from the May 15, 2025 Report of the Advisory Committee on Civil Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Robin L. Rosenberg, Chair
Advisory Committee on Civil Rules

RE: Report of the Advisory Committee on Civil Rules

DATE: May 15, 2025

Introduction

The Civil Rules Advisory Committee met in Atlanta on April 1, 2025. Members of the public attended in person, and public online attendance was also provided. * * *

Part I of this report will present four action items (one of which has two parts). During its April 1 meeting, the Advisory Committee voted to recommend publication in August 2025 of amendments to the following rules:

(a) Rule 41(a): The Advisory Committee proposes publication of amendments to Rule 41 to better facilitate voluntary dismissal of one or more claims in a litigation, as opposed to the entire action. This matter was first presented to the Standing Committee at its January 2025 meeting, but several questions were raised that prompted re-examination of the proposal. As presented below,

the Advisory Committee's Rule 41 Subcommittee (chaired by Judge Cathy Bissoon, W.D. Pa.) carefully considered these questions. The Committee retracted its proposal to extend Rule 41(d) to allow an award of costs after dismissal of even a single claim in a prior action.

(b) Rule 45(c) subpoena for remote testimony and clarification amendment to Rule 26(a)(3)(A)(i): The Rule 43/45 Subcommittee, chaired by Judge M. Hannah Lauck (E.D. Va.), met four times between the Advisory Committee's October 2024 meeting and its April 1 meeting. It now proposes publication of an amendment to Rule 45(c), prompted by *In re Kirkland*, 75 F.4th 1030 (9th Cir. 2023). In that case, the Ninth Circuit held that even though the district court had found remote testimony justified under Rule 43 it could not, by subpoena, compel a witness to provide that testimony. The proposed place for the testimony was within 100 miles of the witness's residence but more than 100 miles from the courthouse, which the court said was beyond the "subpoena power" of the district court. The Ninth Circuit recognized that a rule change could alter this outcome, and the proposed amendment is designed to do that.

In addition, the Advisory Committee recommends publishing a proposed amendment to Rule 26(a)(3)(A)(i) clarifying that each party's pretrial disclosures must specify whether any of the witnesses the party expects to present will provide remote testimony. * * *

(c) Rule 45(b)(1) service of subpoena: The Advisory Committee proposes publication of an amendment to specify methods of service of a subpoena that suffice under the rule, and also to authorize the court in a given case to approve alternative methods. The authorized methods draw in part from Rule 4(e)(2)(A) and (B) for service of original process -- personal delivery to the individual or leaving the subpoena at the person's dwelling place -- with the addition of service by U.S. mail or commercial carrier if a confirmation of delivery is provided. The amendment also authorizes the court to approve another means of service for good cause. The proposed amendment includes two other changes: (1) relaxing the current requirement that witness fees be tendered at the time of service, and (2) providing a 14-day notice period (subject to shortening by the court for good cause) when the subpoena requires attendance at a trial, hearing, or deposition.

(d) Rule 7.1: Responding to concerns that the current disclosure requirements do not adequately alert judges to possible grounds for recusal, the Advisory Committee recommends publication of an amendment intended to provide judges with additional needed information. Two main changes are proposed. One substitutes the term "business organization" for the word "corporation" in the current rule. This change reflects the reality that business entities often have non-corporate forms. The other is to require disclosure of any business organization that directly or indirectly owns 10% or more of the party. These changes are intended to reflect Advisory Opinion No. 57 from the Judicial Conference Committee on the Codes of Conduct.

* * * * *

I. ACTION ITEMS

(a) Rule 41(a)

The Advisory Committee proposes two amendments to Rule 41(a). The first adds additional flexibility for litigants by explicitly permitting the dismissal of one or more claims in

an action, rather than only the entire action, as the text of the current rule suggests. Many courts already allow such flexibility without presenting problems, and permitting dismissal of claims is consistent with the policy reflected throughout the rules of narrowing the issues in a case pretrial. The second is requiring only the signatures of parties that are actively litigating in a case on a stipulation of dismissal. The Advisory Committee concluded that requiring signatures of parties who have departed from the litigation creates opportunities for such parties to stymie settlements if they cannot be found or oppose the stipulation.

Proposed amendments to Rule 41 were presented to the Standing Committee at its January 2025 meeting. Although the Standing Committee was aligned with the Advisory Committee with respect to the goals of the amendments, there were several areas of concern that the Standing Committee thought would benefit from a second look. After extensive deliberation the Rule 41 Subcommittee proposed several changes in response to this helpful feedback that the Advisory Committee adopted.

First, the Advisory Committee abandoned its earlier proposal to amend Rule 41(d), which provides that the judge may award costs to the defendant "[i]f a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant." Previously, the Advisory Committee approved an amendment to this provision that would have permitted the judge to award costs when the plaintiff had previously dismissed and refiled "one or more claims," as opposed to the entire action. Concerns were raised, however, that such an amendment would leave open the possibility that a judge would disproportionately award costs of an entire previous action, when the plaintiff had dismissed only a part of it. Upon reflection, the Subcommittee and Advisory Committee agreed that the amendment was unnecessary. The existing rule is typically deployed when a plaintiff has in fact dismissed an entire previous action, usually when the plaintiff is in search of a more favorable forum or judge. It is in those circumstances that an award of costs is most appropriate. As a result, the Advisory Committee concluded that Rule 41(d) should remain unchanged.

Second, the Advisory Committee made several minor changes to Rule 41(a) and the Committee Note to clarify that the deadline for unilateral dismissal of a claim is filing of an answer or motion for summary judgment by the party opposing the claim.

Third, the Advisory Committee reexamined the text of the proposed amendment to Rule 41(a)(1)(A)(ii) that would require that a stipulation of dismissal be signed by "all parties who have appeared and remain in the action." The subcommittee's goal in proposing this amendment is to ensure that a party who has departed the litigation (either by voluntarily dismissing all of its claims or having all claims against it voluntarily dismissed) cannot obstruct a stipulation of dismissal if it cannot be easily found or if it refuses to sign the stipulation. A concern was raised at the Standing Committee meeting about the interaction between this proposed amendment and Rule 54(b), which provides that (absent a partial final judgment) all parties "remain" in the action until final judgment. So, if parties no longer actively litigating in the case are not required to sign a stipulation of dismissal, those parties may not receive notice that their window to appeal has opened.

Ultimately, after much discussion, the subcommittee decided to retain the proposed language "remain in the action," and the Advisory Committee agreed that the proposed language was sufficiently clear (particularly when compared to alternatives that sought greater precision but

were quite clunky). Additions to the committee note have been made to clarify the amendment's purpose. Moreover, there are numerous instances in the rules that apply to parties actively litigating and not to those who are no longer in the case. One example is Rule 33, which permits service of interrogatories on "a party." It seems unlikely that anyone would interpret that rule to permit service of interrogatories on a party that is no longer prosecuting or defending against a live claim, Rule 54(b) notwithstanding. With respect to concerns that a party might not receive adequate notice, the Advisory Committee was satisfied that current safeguards make that unlikely, including the practice that such a party will continue to receive notice of docket entries through CM/ECF, although typically denominated as "terminated" from the action. In sum, the Advisory Committee concluded that the benefits of the amendment outweigh any risks, though it is of course open to reconsideration if the public comment period suggests otherwise.

Rule 41(a) Amendment Proposal

* * * * *

(b) Rules 45(c) and 26(a)(3)(A)(i)

The Rule 43/45 Subcommittee has been very busy. It held four meetings after the Advisory Committee's October meeting to finalize its proposal to amend Rule 45(c) to remove the difficulty presented by the decision in *In re Kirkland*, 75 F.4th 1030 (9th Cir. 2023). That case held that, despite the 2013 revision of Rule 45 authorizing the court presiding over an action to issue a subpoena for testimony that can be served anywhere in the United States, for trial testimony that authority extends only within the "subpoena power" of the court and does not permit the court to command a distant witness to provide remote trial testimony.

There have been disagreements among district courts about whether they have such power as to distant trial witnesses. The *Kirkland* decision seems to be the first court of appeals decision finding that the district court lacked such authority. The court reached this result even though the Committee Note accompanying the 2013 amendment to Rule 45 clearly said that such authority existed. The Ninth Circuit recognized, however, that a rule amendment could solve the problem.

The *Kirkland* decision is on the books and seems to be having some unfortunate ripple effects, even in cases involving only discovery rather than trial testimony. So the Subcommittee is bringing this amendment proposal forward now even though it has another (and possibly more important) topic on its agenda -- whether to relax the criteria for remote trial testimony under Rule 43(a).

In addition, the Advisory Committee is proposing a slight clarification for Rule 26(a)(3)(A)(i).

Rule 45(c) amendment proposal[1]

* * * * *

[1] During the Standing Committee's January 2025 meeting, a question was raised about possible implications of changes to Rule 45(c) for the "unavailability" criterion for admissibility of deposition transcripts at trial

Excerpt from the May 15, 2025 Report of the Advisory Committee on Civil Rules

Rule 26(a) amendment proposal

* * * * *

(c) Rule 45(b)(1)

This proposed amendment responds to a problem that has been brought up repeatedly in submissions to the Committee over the last two decades or so -- the ambiguity of the requirement in Rule 45(b)(1) of "serving" the witness with the subpoena and also (at the time of service) tendering the witness fee to the witness. For the majority of subpoenas, service is not problematical. But problems have emerged with sufficient frequency to justify a rule change.

The Advisory Committee proposed the amendment presented below to achieve three basic objectives:

> (1) Borrowing from Rule 4(e)(2)(A) and (B) some well-recognized methods of service -- personal delivery or leaving at the abode of the person with a person "of suitable age and discretion who resides there," and adding service by mail or commercial carrier if that includes confirmation of receipt, as has been found sufficient in some courts. The proposed amendment also empowers the district to authorize additional methods for good cause;
>
> (2) Adding a notice period -- 14 days in the draft -- unless the court authorizes a shorter period; and
>
> (3) Providing that the tender of witness fees is not required to effect service of the subpoena, so long as the statutory fees are tendered upon service or at the time the witness appears as commanded by the subpoena.

This amendment proposal is designed to address practical problems that have sometimes resulted from the ambiguity of Rule 45(b)(1)'s current use of the term "delivering a copy to the named person" without being more specific about how that is to be done.

There has been at least one recent reported decision in which multiple attempts at service were deemed ineffective because the witness fee had not also been tendered. And in another recent case, the server did not initially deliver the witness fee check because it had the server's information on it and the server worried for his personal safety if that were revealed to the witness.

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under Rule 32(a)(4) or of prior testimony under Fed. R. Evid. 804(a). These questions received substantial attention before the Advisory Committee subcommittee. After lengthy discussion it was concluded that clarifying the subpoena power would not produce a change in the application of those other rules, which deal with hearsay objections. Some efforts were made to draft Committee Note language to affirm that there was no intention to alter the application of those rules. After lengthy discussion, however, it was concluded that including that language might cause complications rather than avoid them.

Excerpt from the May 15, 2025 Report of the Advisory Committee on Civil Rules

(d) Rule 7.1

The Advisory Committee recommends publishing for public comment amendments to Rule 7.1(a) requiring disclosure by a corporate party of parents and business organizations that directly or indirectly own 10% or more of it. The goal of the amendment is to mandate disclosure of corporate "grandparents" or "great grandparents" in which a judge may hold a financial interest that requires recusal. This report elaborates on the reasons for these changes below after presenting the proposed rule amendment and Committee Note.

Rule 7.1(a) Amendment Proposal

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ADVISORY COMMITTEE REASONS FOR PROPOSED RULE CHANGES

Currently, Rule 7.1(a) requires that a nongovernmental corporate party disclose "any parent corporation and any publicly held corporation owning 10% or more of its stock." The Rule 7.1 Subcommittee, created in spring 2023 and chaired by Justice Jane Bland (Supreme Court of Texas), was formed to consider rule changes to better inform judges of any financial interest "in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding." 28 U.S.C. § 455(b)(4).

More specifically, this project was sparked by concerns that judges are not sufficiently informed in situations in which they might hold an interest in a business organization that is a "grandparent" or "great-grandparent" of a party. For instance, a judge might hold an interest in a "grandparent" corporation that wholly owns a subsidiary that, in turn, owns a party. Under such circumstances, that judge likely has a financial interest requiring her to recuse. But because the rule requires disclosure of only a "parent corporation and any publicly held corporation owning 10% of more of [a corporate party's] stock," the judge will remain in the dark.

Although there do not appear to be serious concerns that judges have acted in a biased manner due to this lack of information, it is also the case that whenever a judge presides over a case in which she has an arguable financial interest in the outcome there is a threat to perceptions of the court's legitimacy and impartiality. As a result, over the last two years, the Subcommittee has considered several possible revisions to the rule that would make it more likely that "grandparents" and other entities up the corporate chain of ownership of a party, in which a judge is reasonably likely to hold an interest, will be disclosed without imposing unnecessarily onerous requirements on litigants.

Notably, the committee note to Fed. R. App. P. 26.1, whose relevant language is identical to Rule 7.1, has since 1998 provided that:

> Disclosure of a party's parent corporation is necessary because a judgment against a subsidiary can negatively impact the parent. A judge who owns stock in the parent corporation, therefore, has an interest in litigation involving the subsidiary. **The rule requires disclosure of all of a party's parent corporations meaning grandparent and great grandparent corporations as well.** For example, if a

> party is a closely held corporation, the majority shareholder of which is a corporation formed by a publicly traded corporation for the purpose of acquiring and holding the shares of the party, the publicly traded grandparent corporation should be disclosed. (Emphasis added.)[2]

This requirement does not appear to have spawned litigation, confusion, or controversy. Despite using the same language, though, Rule 7.1 has by and large been interpreted to require disclosure of only "parents," and not grandparents or other corporate relatives.

In the early days of this project, the Rules Law Clerk and Reporters canvassed a wide swath of disclosure requirements, including districts' local rules and various state rules, to develop an array of options. Among state and local rules, the two dominant approaches were to either use a broad catch-all term (such as to require disclosure of all "affiliates" of a party) or a lengthy "laundry list" of various specific business relationships. Subcommittee deliberation and outreach revealed that both approaches had problems. Broad catch-all provisions requiring disclosure of "affiliates" (or some such term) sweep in a wave of entities that the judge is unlikely to hold and often lead to vast disclosures in which any pertinent information might be buried. On the other hand, the "laundry list" approach seemed to encounter the ever-present danger of lists, that they are overinclusive and underinclusive and require constant maintenance to account for the constantly evolving variety of business relationships. Recognizing that no rule can uncover all instances when recusal might be required by the statute's demand that a judge disqualify on the basis of any interest "however small," 28 U.S.C. § 455(d)(4), our effort has been focused on threading the needle between a rule that is too capacious and one that is too specific. So, after much study, the Subcommittee returned to where it began: an effort to ensure disclosure of corporate "grandparents" and such, as Fed. R. App. P. 26.1 does now, albeit in the note.

In the midst of the Subcommittee's work, in February 2024, the Codes of Conduct Committee issued new guidance to judges: Committee on Codes of Conduct Advisory Opinion No. 57: Disqualification Based on a Parent-Subsidiary Relationship. This guidance directs a judge to focus on whether a parent corporation that does not wholly own a party "has control of a party." The guidance does not define "control" but instead "advises that the 10% disclosure requirement in the Federal Rules (e.g., Fed. R. App. P. 26.1, Fed. R. Civ. P. 7.1, Fed. R. Bankr. P. 7007.1, and Fed. R. Bankr. P. 8012) creates a threshold rebuttable presumption of control for recusal purposes." Should a party disclose an owner of 10% of more of a party, the guidance advises that "a judge may exercise his or her discretion to seek information from the parties or their attorneys; a judge may also review publicly available sources, such as Securities and Exchange Commission filings."

In light of this guidance, the Subcommittee also considered amending Rule 7.1 to require corporate parties to disclose any entity that has control over it. This move would, however, beg the question (as does the Codes of Conduct Committee guidance) as to what constitutes "control." The guidance does not attempt such a definition; instead, it refers to the 10% ownership figure in the various Federal Rules as a proxy for control.

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[2] This language was added to the note in response to a public comment that disclosure of only a "parent" was too narrow. Review of the minutes and agenda books of the Appellate Rules Committee and the Standing Committee reveal no opposition, or even discussion, of this addition to the note. The amended rule was subsequently approved by the various bodies up the chain of command and went into effect in December 1998.

Based on the Codes of Conduct Committee guidance, the Subcommittee concluded that a rule that continues to mandate disclosure of *ownership* of a party is the most promising avenue toward disclosure of grandparents, et al. The goal is to better equip judges to comply with the Codes of Conduct guidance, and therefore their statutory and ethical obligations. This is, and always has been, a tricky exercise. Although the appellate rule has not caused controversy, a rule cannot be amended by amending only the committee note, so the challenge has been to draft rule language that will best meet our goals without being over or underinclusive.

As a result, the Advisory Committee has settled on two proposed changes to the rule, as reflected in the above proposal:

(1) Replace references to "a corporate party" with the broader term "business organizations."

(2) Require disclosure of "a parent business organization" and "any publicly held business organization that directly or indirectly owns 10% or more of" a party.

The Subcommittee's rationale for each of these changes follows.

Business Organizations

The Advisory Committee was concerned that references to "corporations" in the rule are too narrow since there are many business organizations other than corporations whose disclosure would assist judges in complying with their recusal obligations. For instance, "LLCs" or "Master Partnerships" are not necessarily defined as corporations under some state laws. Having concluded that the term corporation now feels too narrow, the next question becomes what to replace it with. The Subcommittee considered several possibilities, but "business organizations" quickly emerged as the most common and generally understood term. For instance, the National Conference of Commissioners on Uniform State Laws and the American Bar Association have long authored the "Uniform Business Organizations Code." Texas also has a "Business Organizations Code." Additionally, while some schools have stuck with the traditional name "Corporations," most leading law schools' introductory corporate law courses are now called "Business Organizations" or "Business Associations."

Direct or Indirect Ownership

As explained above, and as the draft Committee Note reflects, the primary goal was to better inform judges of the possibility that the value of interests they hold in "grandparents" and others up the chain of ownership from parties might be affected by the outcome of cases before them. Although this requirement does not seem controversial, as evidenced by the lack of controversy that has emerged from 27 years of experience with the appellate rule's committee note, drafting rule language to capture this goal has proven challenging. But once the Subcommittee settled on a lodestar of consistency with the Codes of Conduct Committee's guidance, its focus turned to ensuring disclosure of owners of 10% or more of a party.[3] Candidly, absolute precision

[3] As reflected in the draft amendment, the proposed rule abandons the term "stock" to define ownership, since ownership interests may have many different labels.

has proven elusive, so the Subcommittee eventually converged on rule language that reflects the intent of the amendment and will hopefully prompt parties to reveal owners and part owners in which judges are likely to hold investments and whose value may be affected by the outcome of the litigation.

First, the Advisory Committee decided to retain the requirement that a "parent business organization" be disclosed. "Parent" is to some degree an elusive term that might be defined in numerous ways. Nevertheless, it has been part of the various federal disclosure rules since their inception, and it does not seem to have caused significant problems. The Advisory Committee considered eliminating the requirement of disclosing a parent altogether (that is, requiring only disclosure of publicly held direct or indirect owners of 10% or more) but concluded that there was no good reason to eliminate it, and that there may very well be occasions when a judge holds an interest in a privately held entity that is a parent of a party, but the judge is unaware.

Second, the Advisory Committee opted for language requiring disclosure of direct or indirect owners of 10% or more of a party. As the Committee Note explains, this is a pragmatic concept intended to prompt disclosure of grandparents or others who may own a significant share of a party via ownership of another intermediate entity. Such disclosure would trigger the suggestion in the Codes of Conduct Committee advisory opinion that a judge investigate further whether recusal is necessary. As was the case when the words "parent corporation" were discussed in the 1990s, there is a certain inherent imprecision to the language, but parties have long been trusted to meet their disclosure obligations faithfully and practically based on the purpose of those obligations. The Subcommittee labored over whether to prescribe a mathematical formula for indirect ownership or to lay out a series of examples of indirect ownership (or lack thereof) in the note, but ultimately opted against either option, in favor of a more general standard informed by a purpose defined in the committee note.

Of course, rulemakers should always be wary of imposing vague requirements on litigants. At the same time, however, this is not a rule that governs how parties conduct litigation or interact with one another. Nor is it a rule that is related to the law, facts, and merits of a case. Rather, it is a rule that attempts to help judges comply with a mandate that itself is rather vague. To borrow from mathematics, the Rule's relationship to the recusal standard is something like an asymptote -- a line that a curve approaches but never touches. After several years of deliberation and study, the Advisory Committee is eager to hear the reactions of those potentially affected by the rule in the public-comment period. If in fact, what is proposed is too vague or onerous compared to the potential benefits, we will surely learn that then.

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PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]

Rule 7.1. Disclosure Statement

(a) Who Must File; Contents.

(1) ***Nongovernmental ~~Corporations~~ Business Organizations***. A nongovernmental ~~corporate~~ business organization that is a party or ~~a nongovernmental corporation~~ that seeks to intervene must file a statement that:

(A) identifies any parent ~~corporation~~ business organization and any publicly held ~~corporation~~ business organization ~~owning~~ that directly or indirectly owns 10% or more of ~~its~~ ~~stock~~ it; or

[1] New material is underlined in red; matter to be omitted is lined through.

(B) states that there is no such ~~corporation~~ business organization.

* * * * *

Committee Note

Rule 7.1(a)(1) is amended in two ways intended to better assist judges in complying with their statutory and ethical duty to recuse in cases in which they or relevant family members have "a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." 28 U.S.C. § 455(b)(4); Code of Conduct for United States Judges Canon 3C(1)(c).

First, the amended rule substitutes "business organization" in place of references to "corporation" to cover entities not organized as "corporations," defined narrowly. "Business organizations" is a more capacious term intended to flexibly adapt to the ever-changing variety of commercial entities, and the term is generally accepted and well understood. *See*, *e.g.*, Uniform Business Organizations Code (2015).

Second, the rule is amended to require disclosure of business organizations that "directly or indirectly own 10% or more of" a party, whether or not that ownership interest is formally denominated as stock. Such a direct or indirect owner is presumed to hold a sufficient interest in a party to raise a rebuttable presumption that a judge's financial interest in the owner extends to the party, warranting recusal. *See* U.S. Judicial Conference, Guide to Judiciary Policy § 220, Committee on Codes of Conduct, Advisory Opinion No. 57: Disqualification Based on a Parent-Subsidiary

Relationship (Feb. 2024). Under the amended rule, a party must disclose not only a parent business organization but also any publicly held business organization that is a grandparent, great-grandparent, or other corporate relative that owns 10% or more of a party, whether directly or through another business organization. The requirement to disclose "indirect" owners of 10% or more of a party is a pragmatic effort to better inform judges of circumstances when their financial interests may be affected by a litigation or when further inquiry into the ownership interests in a party is appropriate.

As before, this rule does not capture every scenario that might require a judge to recuse. As reflected in the Committee on Codes of Conduct Advisory Opinion No. 57, a judge may need to seek additional information about a party's business affiliations when deciding whether to recuse. And, as before, districts may promulgate local rules requiring additional disclosures.

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures.

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(3) ***Pretrial Disclosures.***

(A) *In General.* In addition to the disclosures required by Rules 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and~~,~~ (if not previously provided)~~,~~ the address and telephone number

[1] New material is underlined in red; matter to be omitted is lined through.

of each witness—separately identifying those the party expects to present and those it may call if the need arises, and whether the testimony will be in person or remote;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

* * * * *

Committee Note

Under Rule 43, the court may permit remote testimony at trial. Because Rule 26 requires disclosure of witnesses a party "expects to present," it should be understood to include witnesses who will testify remotely upon court approval. This amendment clarifies that the disclosure requirement applies whether or not the witness is

testifying in person or remotely and alerts the parties and the court that a party proposes to present one or more witnesses remotely.

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]

Rule 41. Dismissal of Actions or Claims

(a) Voluntary Dismissal.

(1) ***By ~~the~~ a Plaintiff.***

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, ~~the~~ a plaintiff may dismiss ~~an~~ its action or one or more of its claims without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have

[1] New material is underlined in red; matter to be omitted is lined through.

appeared and remain in the action.

* * * * *

(2) ***By Court Order; Effect.*** Except as provided in Rule 41(a)(1), an action or one or more claims may be dismissed at ~~the~~ a plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action, claim, or claims may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

* * * * *

Committee Note

Rule 41 is amended in two ways. First, Rule 41(a) has been amended to add language clarifying that a plaintiff may voluntarily dismiss "one or more of its claims" in a multi-claim case. A plaintiff may accomplish dismissal of either its action or one or more of its claims unilaterally prior to an answer or motion for summary judgment by a party opposing that claim, or by stipulation or court order. Some courts interpreted the previous language to mean that only an entire case, *i.e.* all claims against all defendants, or only all claims against one or more defendants, could be dismissed under this rule. The language suggesting that voluntary dismissal could only be of an entire case has remained unchanged since the 1938 promulgation of the rule. In the intervening years, multi-claim and multi-party cases have become more typical, and courts are now encouraged to both simplify and facilitate settlement of cases. The amended rule is therefore more consistent with widespread practice and the general policy of narrowing the issues during pretrial proceedings. This amendment to Rule 41(a), permitting voluntary dismissal of a claim or claims, does not affect the operation of Rule 41(d), whose applicability is limited to situations when the plaintiff has previously dismissed an entire action.

Second, Rule 41(a)(1)(A)(ii) is amended to clarify that a stipulation of dismissal need be signed only by all parties who have appeared and remain in the action. Some courts had interpreted the prior language to require all parties who had ever appeared in a case to sign a stipulation of dismissal, including those who have dismissed all claims, or had all claims against them dismissed. Such a requirement can be overly burdensome and an unnecessary obstacle to narrowing the scope of a case; signatures of the parties currently litigating claims at the time of the stipulation

provide both sufficient notice to those actively involved in the case and better facilitate formulating and simplifying the issues and eliminating claims that the parties agree to resolve.

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]

Rule 45. Subpoena

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(b) Service.

(1) ~~***By Whom and How; Tendering***~~ ***Means;***

Notice Period; ***Fees.***

(A) *By Whom and How.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires:

(i) delivering a copy to the named person personally;

(ii) leaving a copy at the person's dwelling or usual place of abode with someone of

[1] New material is underlined in red; matter to be omitted is lined through.

suitable age and discretion who resides there;

(iii) sending a copy to the person's last known address by a method of United States mail or commercial-carrier delivery, if the selected method provides confirmation of actual receipt; or

(iv) using another means that is authorized by the court for good cause and is reasonably calculated to give notice.

(B) *Time to Serve if Attendance Is Required; Tendering Fees.* ~~and, i~~If the subpoena requires that the named person~~'s~~ attend~~ance,~~ a trial, hearing, or deposition, unless the court orders

otherwise, the subpoena must be served at least 14 days before the date on which the person is commanded to attend. In addition, the party serving the subpoena must tender~~ing~~ the fees for 1 day's attendance and the mileage allowed by law at the time of service, or at the time and place the person is commanded to appear. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

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Committee Note

Rule 45(b)(1) is amended to clarify the means of serving a subpoena. Courts have disagreed about whether the rule requires hand delivery. Though service of a subpoena usually does not present problems—particularly with regard to deposition subpoenas—uncertainty about what the rule requires has on occasion caused delays and imposed costs.

The amendment removes that ambiguity by providing that methods authorized under Rule 4(e)(2)(A) and (B) for service of a summons and complaint constitute effective service of a subpoena. Though the issues involved with service of a summons are not identical with service of a subpoena, the basic goal is to give notice and the authorized methods should assure notice. In place of the current rule's use of "delivering," these methods of service also are familiar methods that ought easily adapt to the subpoena context.

The amendment also adds another option—service by United States mail or commercial carrier to the person's last known address, if the selected method provides confirmation of actual receipt. The rule does not prescribe the exact means of confirmation, but courts should be alert to ensuring that there is reliable confirmation of actual receipt. *Cf.* Rule 45(b)(4) (proving service of subpoena). Experience has shown that this method regularly works and is reliable.

The amended rule also authorizes a court order permitting an additional method of serving a subpoena so long as that method is reasonably calculated to give notice. A party seeking such an order must establish good cause, which ordinarily would require at least first resort to the authorized methods of service. The application should also demonstrate that the proposed method is reasonably calculated to give notice.

The amendment adds a requirement that the person served be given at least 14 days' notice if the subpoena commands attendance at a trial, hearing, or deposition. Rule 45(a)(4) requires the party serving the subpoena to give notice to the other parties before serving it, but the rule does not presently require any advance notice to the person

commanded to appear. Compliance may be difficult without reasonable notice. Providing 14-day notice is a method of avoiding possible burdens on the person served. In addition, emergency motions for relief from a subpoena can burden courts. For good cause, the court may shorten the notice period on application by the serving party.

The amendment also simplifies the task of serving the subpoena by removing the requirement that the witness fee under 28 U.S.C. § 1821 be tendered at the time of service as a prerequisite to effective service. Though tender at the time of service should be done whenever practicable, the amendment permits tender to occur instead at the time and place the subpoena commands the person to appear. The requirement to tender fees at the time of service has in some cases further complicated the process of serving a subpoena, and this alternative should simplify the task.

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]

Rule 45. Subpoena

* * * * *

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person:

[1] New material is underlined in red; matter to be omitted is lined through.

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial or hearing and would not incur substantial expense.

(2) ***For Remote Testimony.*** Under Rule 45(c)(1), the place of attendance for remote testimony is the location where the person is commanded to appear in person.

(32) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

* * * * *

Committee Note

In 2013, Rule 45(a)(2) was amended to provide that a subpoena must issue from the court where the action is pending, and Rule 45(b)(2) now provides that such a subpoena can be served at any place within the United States.

Since the 2013 amendments, however, some courts have concluded that they are without authority to command witnesses to provide remote trial testimony because the witnesses are not within the "subpoena power" of the presiding court. *See, e.g., In re Kirkland*, 75 F.4th 1030 (9th Cir. 2023) (holding that a subpoena can compel remote trial testimony from a witness only if the witness resides or transacts business in person within 100 miles of the court or within the state in which the court sits). Questions have also been raised about whether a subpoena can compel a nonparty to provide discovery if the nonparty witness is located outside the geographical scope of the subpoena power to command the witness to appear in court. *See, e.g., York Holding, Inc. v. Waid*, 345 F.R.D. 626 (D. Nev. 2024) (rejecting the argument that a Nevada district court subpoena could not command production of documents within 100 miles of the nonparty's place of business in New Hampshire).

This amendment clarifies that the court's subpoena power for in-court testimony or to provide discovery extends nationwide so long as a subpoena does not command the

witness to travel farther than the distance authorized under Rule 45(c)(1), which provides protections against undue burdens on persons subject to subpoenas. It specifies that, for purposes of Rule 45(c)(1), the witness "attends" at the place where the person must appear to provide the remote testimony. For purposes of Rule 43 and Rule 77(b), such remote testimony occurs in the court where the trial or hearing is conducted.

The amendment does not alter the standards for deciding whether to permit in-court remote testimony. Instead, it applies to any subpoena for witness testimony. Ordinarily, court approval is required for remote testimony in court. Rule 43, for example, authorizes remote testimony in trials and hearings but depends on court permission for such testimony. Rule 26(a)(3)(A)(i) requires that the parties disclose the identities of witnesses whose testimony will be presented, without distinguishing between in-person and remote testimony. Even remote deposition testimony is authorized only by stipulation or court order. *See* Rule 30(b)(4).

When a subpoena commands a witness to provide remote testimony, it is the responsibility of the serving party to ensure that the necessary technology is available at the remote location for such testimony.

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]

Rule 81. Applicability of the Rules in General; Removed Actions

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(c) Removed Actions.

(1) ***Applicability.*** These rules apply to a civil action after it is removed from a state court.

* * * * *

(3) ***Demand for a Jury Trial.***

(A) ***Before Removal*** ~~***As Affected by State Law.***~~ A party who, before removal, expressly demanded a jury trial in accordance with state law need not renew the demand after removal.

(B) ***After Removal.*** If no demand has been made before removal,

[1] New material is underlined in red; matter to be omitted is lined through.

Rule 38(b) governs a demand for a jury trial. If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38(b) must be given one if the party serves a demand within 14 days after:

~~If the state law did not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time. The court must so order at a party's request and may so order on its own. A party who fails to make a demand when so ordered waives a jury trial.~~

~~**(B)** ***Under Rule 38.*** If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:~~

(i) it files a notice of removal; or

(ii) it is served with a notice of removal filed by another party.

Committee Note

Rule 81(c) is amended to remove uncertainty about when and whether a party to a removed action must demand a jury trial. Prior to 2007, the rule said no demand was necessary if the state court "does" not require a jury demand to obtain a jury trial. State practice on jury demands varies, and it appears that in at least some state courts no demand need be made, although it is uncertain whether those states actually guarantee a jury trial unless the parties affirmatively waive jury trial. In other state courts, a jury demand is required, but only later in the case than the deadline in Rule 38 for demanding a jury trial. A number of states have rules similar to Rule 38, but time limits for making a jury demand differ from the time limit in Rule 38.

This amendment is designed to remove uncertainty about whether and when a jury demand must be made after removal. It explicitly preserves the right to jury trial of a party that expressly demanded a jury trial before removal. But otherwise it makes clear that Rule 38 applies to removed cases. If all pleadings have been served at the time of removal, the demand must be made by the removing party within 14 days of the date on which it filed its notice of removal, and by any other party within 14 days of the date on which it was served with a notice of removal. If further pleadings are required, Rule 38(b)(1) applies to the removed case.

When no demand has been made either before removal or in compliance with Rule 38(b), the court has discretion under Rule 39(b), on motion, to order a jury trial on any issue for which a jury trial might have been demanded.

The amendment removes the prior exemption from the jury demand requirement in cases removed from state courts in which an express demand for a jury trial is not required. Courts no longer have to order parties to cases removed from such state courts to make a jury demand; the rule so requires.

Excerpt from the May 15, 2025 Report of the Advisory Committee on Criminal Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. James C. Dever III, Chair
Advisory Committee on Criminal Rules

RE: Report of the Advisory Committee on Criminal Rules

DATE: May 15, 2025

I. INTRODUCTION

The Advisory Committee on Criminal Rules met in Washington, D.C., on April 24, 2025.
* * *

The Advisory Committee has one action item: it unanimously recommends publication of amendments to Rule 17 and the accompanying Committee Note.

* * * * *

II. ACTION ITEM: RULE 17 SUBPOENA AUTHORITY (22-CR-A; 24-CR-J; 25-CR-G)

The Advisory Committee voted unanimously at its April 2025 meeting to recommend that the Standing Committee approve for publication the proposed amendments to Rule 17 and the accompanying Committee Note. A copy of the proposed amendments is attached to this report. An overview of the proposed amendments follows a recap of their development.

A. Developing the Proposed Amendments to Rule 17 and the Committee Note

In the spring of 2022, the Advisory Committee received a proposal to amend Rule 17 from the White Collar Crime Committee of the New York City Bar (22-CR-A). The proposal urged revision of the rule to allow subpoenas to third parties for information "relevant and material to the preparation of the prosecution or defense." This "materiality" standard, the proposal argued, would be more appropriate than the test announced by the Supreme Court in *United States v. Nixon*, 418 U.S. 683, 700 (1974), which almost all federal courts now apply to restrict defense subpoenas to third parties under Rule 17(c).

Nixon involved a subpoena issued by the Special Prosecutor ordering then President Nixon to produce White House tapes for use in the criminal prosecution of White House staff. The prosecutor had filed a motion seeking trial court authorization of the subpoena, and the Court, quoting language that remains today in the rule, stated:

> [I]n order to require production prior to trial, the moving party must show: (1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general "fishing expedition."

Nixon, 418 U.S. at 699-700. The Court continued, "the Special Prosecutor, in order to carry his burden, must clear three hurdles: (1) relevancy; (2) admissibility; (3) specificity." *Id.* at 700.

The New York City Bar's proposal noted that the Court in *Nixon* declined to decide if the standard it announced was appropriate for third-party subpoenas by the defense; that the restrictive requirements applied in *Nixon* were developed in *Bowman Dairy v. United States*, 341 U.S. 214 (1951), where the Court suggested concern that the subpoena there *between* parties could provide an end run around restrictions in Rule 16; that unlike prosecutors, defendants have no access to grand jury subpoenas or search warrants to obtain evidence from third parties; that defendants should have at least as much access to information from third parties when facing incarceration and criminal punishment as they do when defending against civil claims; and that a few district courts have already recognized that the strict *Nixon* test should not apply to defense subpoenas to third-parties.[1] In addition to replacing the *Nixon* standard with "materiality," the proposal included

[1] These arguments are forcefully made as well in a petition for certiorari seeking review of the question "Whether a criminal defendant seeking pretrial production of documents from a third party by subpoena under Federal Rule of

other revisions. This included adding "electronically stored information" to the list of items a subpoena recipient may be ordered to produce, restoring language removed during restyling that had restricted Rule 17(h) to subpoenas to the government or to the defendant, and eliminating language in Rule 17(c)(1) to make it clear that no court order or prior approval is required to issue a subpoena, regardless of whether it seeks production in advance of trial, unless it seeks personal and confidential information.

To evaluate the proposal to amend Rule 17, then Chair of the Advisory Committee Judge Raymond Kethledge appointed a Subcommittee chaired by Judge Jacqueline Nguyen to develop a recommendation for the Advisory Committee.

While the Subcommittee undertook its work, the Advisory Committee also received two additional letters related to Rule 17 from the National Association of Criminal Defense Lawyers (NACDL) (24-CR-J and 25-CR-G). NACDL raised similar concerns to those in the New York City Bar's proposal, and it added other considerations (for example, authorization of ex parte subpoenas and expanding availability of subpoenas to criminal proceedings other than trials).

Over a period of more than two years, the Subcommittee's examination of the problem included the following:

- organizing a day-long information session at the Advisory Committee's October 2022 meeting, with eleven defense and prosecution practitioners invited from around the country to share their experience and concerns about Rule 17 and answer questions from Advisory Committee members;

- meeting with experts representing tech companies, banks, and financial service companies, whose practices included responding to subpoenas;

- hearing summaries of the Reporters' discussions with individuals representing medical providers, hospitals, and schools, as well as attorneys from the Department of Justice who work on victim and witness issues in the Executive Office of U.S. Attorneys; and

- reviewing multiple research memoranda by the Reporters and Rules Law Clerks about the rule's history, as well as subpoena law and practice in both federal and state courts.

The Subcommittee's investigation identified several concerns about the language of the rule, which has remained essentially unchanged since its adoption in 1944, except for the addition of (c)(3) in 2008 to implement the Crime Victims' Rights Act. In brief, the rule's existing guidance about obtaining, reviewing, and responding to subpoenas to produce items is ambiguous and incomplete, and it has produced conflicting interpretations that afflict multiple aspects of subpoena practice. Even the *Nixon* standard itself is applied in different ways from district to district. That

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Criminal Procedure 17(c) must satisfy the heightened standard applied in *United States v. Nixon,* 418 U.S. 683 (1974) – a question that *Nixon* expressly left open." See *Rand v. United States of America*, Petition for a writ of certiorari, No. 16-526, 2016 WL 6123829, at *i (Oct. 18, 2016). See *United States v. Rand*, 853 F.3d 451 (4th Cir. 2016), *cert. denied,* 580 U.S. 1001 (2016).

inconsistency, the Advisory Committee learned, has meant that access to evidence from third parties is nearly impossible in some places, and much easier in others. In addition, the conflicting interpretations have created uncertainty and increased costs for parties and courts.

More important, some of the most restrictive interpretations of the rule can deprive the defense of a realistic opportunity to secure evidence needed for accurate adjudication. Many practitioners related their experience with courts reading the rule to bar all ex parte motions and subpoenas, or to mandate that everything produced must be provided to both sides. Attorneys noted that without ex parte motions, "the government will be able to see what the defense is seeking and then get a copy of the documents when they come in—even if he would not have been required to disclose them to the government under Rule 16." Minutes of the Oct. 27, 2022 Meeting of the Advisory Committee on Criminal Rules, at p. 18. One said, "it was "somewhat terrifying … that a rule exists that can result in us actually not following or adhering to our ethical duties as defense attorneys. It should not depend on how liberal the judge is in terms of his or her reading of the statute." *Id.* at p. 42. This attorney added, "Many things are left in the dark because, as a defense attorney, you don't want to run the risk of disclosing information that can end up harming your client." *Id.* at p. 58. Another attorney related this example:

> [I]n a sexual assault the defense investigation uncovered from its own witness interviews that the alleged victim, instead of immediately reporting the assault or immediately going to a hospital and Medical Center, instead went to a casino and spent considerable time there. … The videos would show that what happened was inconsistent with the victim's statement. The government had not turned over this information, which wasn't in its control. This evidence, which was critical to their theory of defense, was in the hands of a third party. Disclosing the request for this information would have tipped the hand of what their defense theory was and identified the witnesses they were talking to. So her office very much wanted to file this request for information from the casino ex parte and under seal. The trial ended in an acquittal, and the information obtained by subpoena was very important."

Id. at p. 29.

As for the *Nixon* test, defense practitioners related that judges had interpreted that test to categorically prohibit subpoenas for impeachment evidence, or to prohibit a subpoena unless a party first presents a nearly verbatim recital of the contents of each item sought as proof of its certain admissibility. One participant related a case in which a subpoena for phone records provided evidence that defendant was in fact innocent, and the charges were dropped on the first day of trial. "But if there had been a motion to quash under *Nixon*," he said, he "would have been unable to satisfy the *Nixon* test." *Id.* at p. 17. Another stated many courts "read the *Nixon* standard to require you to describe the documents with super precision," which he could rarely do. Another agreed he cannot pass the *Nixon* standard unless he knows "exactly what this camera is going to show or exactly what the phone records will say." *Id.* at p. 42.

These strict readings are not just problematic, they are unnecessary. Despite repeated inquiries to practitioners and other experts, no one reported that "fishing expeditions," harassment, unwarranted disclosure, or other abuses of Rule 17 existed or were more of a problem in the

jurisdictions that follow more flexible interpretations of the rule. Instead, both government and defense practitioners reported that judges tend to manage subpoenas for sensitive information, problematic parties or counsel, and other issues on a case-by-case basis, using tools such as requiring motions before issuance, ordering returns to the court, in camera review, and strict protective orders regulating who can access or review specific material obtained, for what purpose, and how the material must be redacted, anonymized, stored, and destroyed.

The Subcommittee also hoped to clarify several procedural issues in the rule text and expand, to some extent, access to third party information under the rule, while preserving sufficient judicial control over the subpoena process. Its first discussion draft of an amendment:

- required a motion and court order to ensure judicial oversight for every non-grand jury subpoena to produce documents or information, not just for those seeking "personal and confidential information" about a victim;

- contained two separate sets of procedures—one for subpoenas seeking either "personal or confidential information about a victim" or information likely to be "protected by [a privilege, confidentiality protection, or privacy protection under federal or state law]" and less rigorous set of procedures for subpoenas seeking other, unprotected information;

- included issuance standards for both sets of subpoenas with two requirements derived from the *Nixon* test—the requesting party had to describe each designated item with reasonable particularity and state facts showing that the item is not reasonably available to the party from another source—but others that departed from the *Nixon* admissibility standard. A subpoena for unprotected information required a "materiality" showing—that the information is "material to preparing the prosecution or defense"—while a subpoena for protected information required a showing that it is likely to be admissible or exculpatory;

- permitted production of the designated items to the requesting party's counsel only when the subpoena sought unprotected information; required for all other subpoenas that the subpoena recipient turn over all items to the court: and then required the court to review those items in camera and ensure that any disclosure complied with federal law;

- added a provision expressly authorizing ex parte subpoenas upon a showing of good cause, and limiting disclosure of items produced to non-requesting parties; and

- clarified which provisions of the rule applied to non-grand jury subpoenas only, distinguishing provisions that governed grand jury subpoenas as well.

For a full day at its November 2024 meeting, Advisory Committee members and a dozen invited defense, prosecution, privacy, and victim experts shared their views about the issues highlighted in the discussion draft:

- *Need for judicial oversight*. Participants voiced strong support for more flexibility than the draft allowed. They argued that many subpoenas are now available to the parties without a motion and court order even when seeking production before trial, and that they should remain so. They also recommended that the rule permit some subpoenas to be returnable directly to the requesting party and not be returned to the court. There was general agreement that in camera review by judges is burdensome, particularly when a large amount of material is involved, and not needed in all cases. The practitioners also emphasized that negotiation rather than litigation between the requesting party and subpoena recipient is the norm for many cases and should be encouraged. Protective orders are common, developed by the parties for court approval, or by the court if there is an ex parte subpoena or the parties cannot agree.

- *Bifurcated approach to protected and unprotected information*. This aspect of the discussion draft received little support, with many participants questioning the need for different standards for protected and unprotected information, and warning that defining that distinction could create burdensome litigation.

- *Modifying the* Nixon *standard*. Despite continued support by some for a more generous standard allowing access to the information that would "lead to" admissible evidence, others expressed concern that any change to the *Nixon* test could increase abuse by defendants as well as decrease cooperation by victims and witnesses. Participants did agree that it might be possible to reach consensus on a standard that would relax, somewhat, *Nixon*'s "admissibility" requirement.

- *Allowing subpoenas for other types of proceedings.* Participants favored adding text that would clarify that subpoenas should be available to both parties for sentencing and at least some evidentiary hearings in addition to trial, including hearings on suppression motions.

- *Access to ex parte subpoenas*. Participants generally agreed with the draft's approach, emphasizing that parties do sometimes need to proceed ex parte, and when material is produced for an ex parte subpoena, disclosure to the opposing party should not be required. Participants echoed the experience of those at earlier sessions who related that when judges did not allow ex parte motions, defense counsel was left with two untenable options: either risk harming the client by revealing defense strategy or even uncovering inculpatory information the government would otherwise not have known, or forego a subpoena, abandoning pursuit of information that they believe is essential to defend the client.

Using this helpful guidance, the Subcommittee developed the present draft, which adopts a more incremental, flexible approach, and attempts to replicate and preserve the policies followed where subpoena practice is reportedly working well. At its April 2025 meeting, the Committee rejected (by a vote of 8 to 4) a more significant departure from *Nixon* that would have required that the items be likely to "lead to" admissible evidence, and also rejected (by a vote of 11 to 1) a proposed addition to Rule 17(c)(3) that would have expanded the motion and notice requirements

in that subsection to include subpoenas seeking personal and confidential information about witnesses as well as victims.

After making several minor modifications, the Advisory Committee unanimously approved the draft amendments to the Rule and Committee Note as ready for referral to the Standing Committee for publication. The attached versions include several style changes incorporated after that approval.

B. Overview of the Substantive Amendments to Rule 17

The Advisory Committee's proposed amendments to Rule 17 are concentrated in section (c) of the rule, which governs subpoenas to produce documents and other items. A list of the seven primary issues addressed in the amendments appears below. The draft Committee Note contains additional explanations of the proposed amendments.

(1) *Application to Proceedings Other Than Trial*

Some courts had interpreted the existing language in Rule 17(c)(1), which refers only to "trial," as barring subpoenas for all proceedings other than trial. This interpretation leaves the defense with no mechanism to obtain evidence from third parties for proceedings other than trial, and drastically limits the government's options.[2] To fix this, new Rule 17(c)(2)(A) expressly authorizes the use of subpoenas at sentencing and suppression hearings (where these subpoenas are already used regularly in many districts), as well as detention and revocation hearings, where there is statutory or rule authority for parties to present evidence and the need for third party evidence arises on occasion.

The Advisory Committee had an extended discussion of which proceedings should be listed in the rule. The Advisory Committee decided to include revocations on the list after multiple members – defense, prosecution, and judges – spoke about the occasional need for subpoenas for revocation proceedings to obtain, for example, police reports, body camera footage, and treatment records. As for detention hearings, everyone agreed it would be rare to use a 17(c) subpoena at an initial detention, but a clear majority expressed support for including them in the amended rule. The members' reasons included the possibility of a reconsideration of detention where items such as employment records would be useful, the importance of this stage, and the Bail Reform Act's allowance of the presentation of witnesses and information. There was no support for attempting to specify which detention hearings should allow subpoenas and which should not.

Responding to the concern that there would be few limits on subpoenas when the rules of evidence do not apply, members noted the party seeking the subpoena would also have to describe it with particularity, establish the recipient has the information, and that it cannot be obtained any other way, and that even where judges have accepted subpoenas for detention hearings, they have seldom been used.

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[2]The government may obtain evidence from third parties for non-trial proceedings with a search warrant, or, under limited circumstances, with a grand jury subpoena.

The amendment also provides flexibility to the court to allow the use of subpoenas for other evidentiary hearings in an individual case. As explained in the proposed Committee Note, proceedings such as preliminary hearings occur very early in the process, and there is seldom time to seek a subpoena. But there are rare cases in which there may be an opportunity to seek a subpoena and a need to do so, and the rule provides flexibility for the courts to authorize subpoenas in such cases.

(2) *Codifying a Somewhat Loosened Nixon Standard*

Rather than substituting an entirely different standard for non-grand-jury subpoenas seeking the production of documents or other items, the amendment makes a more incremental change, codifying in Rule 17(c)(2)(B) an interpretation of the *Nixon* standard that is slightly looser than what some courts have demanded. Some courts have required the requesting party to prove with certainty that the information would be admitted, thus barring, for example, subpoenas for impeachment evidence until after the other party had presented its witnesses. The Advisory Committee was persuaded these decisions had applied the admissibility requirement in *Nixon*'s interpretation of prior text too rigidly. In other districts, judges have found the "admissibility" requirement of *Nixon* can be satisfied by a showing of likely admissibility, and defense and government practitioners in such districts reported no problems. Retaining some relationship to admissibility narrowed the scope of what can be sought by tying that information to the designated proceeding and further preventing "fishing expeditions." As the Criminal Division Chief for the U.S. Attorney's Office for the Western District of North Carolina stated at the Committee's November meeting, "Admissibility is what tethers it to the trial or hearing; if you sever that, it becomes a completely different beast." Minutes of the November 6-7, 2024, Meeting of the Advisory Committee for the Criminal Rules, p. 39.

The Advisory Committee, by a vote of 8 to 4, adopted the "likely admissible" language to indicate that somewhat more flexibility is intended. In doing so, it rejected an alternative formulation— "likely to lead to" admissible evidence—that would have nudged the amendments even closer to the standards supported by the New York City Bar Committee, NACDL, and many of the defense practitioners who spoke with the Advisory Committee.

Other aspects of the standard codified in the rule are also derived from the *Nixon* decision. Requiring that items be described with reasonable particularity is intended to replace whatever "specificity" metric courts had been applying under *Nixon*. That the items are not reasonably available from another source replaces the *Nixon* mandate that a party show that the items "are not otherwise procurable reasonably in advance of trial by exercise of due diligence." That the items are "likely to be possessed by the recipient," is not separately addressed in *Nixon.* But, like the other requirements, is an important aspect of protecting against "fishing expeditions," which *Nixon* does mention. In addition to the statement in (2)(B), both (c)(2)(D) and (c)(7) reference these modified *Nixon* requirements as necessary showings when seeking a subpoena by motion or defending a subpoena against a motion to quash.

The proposed amendments continue to restrict Rule 17 subpoenas so that they are not tools for discovery (e.g., by limiting them to items described with reasonable particularity that are "likely admissible" as evidence in a designated proceeding). But the amendments do not perpetuate

the outdated policy of requiring a motion and heightened justification whenever a subpoena seeks production in advance of trial. *Nixon's* standard included the statement that a subpoena to produce items before trial is not available unless the party "cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial." Many courts applying the *Nixon* test today often do not discuss this requirement, instead sticking to "relevance, specificity, and admissibility." And for good reason. When Rule 17 was adopted and its requirements first developed, pretrial access to evidence was much more restricted than it is now. The rule's authorization of production in advance of trial to avoid delay and expedite trial was novel, and the Court termed it the rule's "chief innovation." *Nixon*, 418 U.S. at 698. These days, mid-trial production and other late revelations tend to be unwelcome surprises or lapses, not standard procedure.

(3) *When Motion and Order Required*

New Rule 17(c)(2)(C) provides a clear rule explaining when a party must obtain the court's permission by motion before serving a subpoena and when the party may serve a subpoena without motion. Courts continue to differ on when a motion is required based in part on the ambiguity of the language in Rule 17(c)(1), and the *Nixon* Court's interpretation of this provision as requiring court authorization for a subpoena seeking production in advance of trial. In many districts, motions before issuance are not routinely required. Practitioners and judges expressed significant concerns about the burdens that a motion requirement for all or most Rule 17(c) subpoenas would create in their districts, for both counsel and courts.[3]

The added text creates a default, allowing a party to serve the subpoena without a motion unless a motion is required by local rule, court order, or by Rule 17(c)(3)—the existing provision regulating subpoenas seeking certain victim information—or new Rule 17(c)(4) requiring a motion before a self-represented party may serve a subpoena to produce items. The new provision ensures court supervision when needed most, and it provides flexibility to courts to add oversight to accommodate particular types of subpoenas or individual cases.

The Committee Note also suggests that even without a motion, other procedures in the rule or otherwise available to the court, such as protective orders, are available to control potential abuse of the subpoena process by the parties.

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[3] Consider this description from a CJA attorney:

> In her experience, an attorney's first Rule 17(c) motion takes 20 hours, which is close to $3,000 of taxpayer money. Subsequent ones now take her three hours, which is $500.00 of taxpayer money. Additionally, there will be a hearing, which adds to the cost. All of this cost is imposed on many people who are not bad actors. She explained that even putting in three hours plus court time and then potentially fighting with the recipient means she will hit her funding cap really early as a CJA lawyer, requiring her to apply to exceed the cap. It requires her to explain things more and raises a worry about voucher cutting. If she did a lot of investigative work, but the subpoenas don't pan out, she worries that the judge may not want to approve funds to compensate for her work.

Minutes of the Oct. 27, 2022 Meeting of the Advisory Committee on Criminal Rules, p. 43.

(4) *Proceeding Ex Parte*

New Rule 17(c)(2)(E) and (F) respond to concerns about interpretations of the existing text of the rule that mandate disclosure of every motion and subpoena to all parties. The Advisory Committee concluded that both the defense and the government had advanced persuasive reasons for proceeding ex parte under Rule 17(c), and that permitting ex parte motions and production had been working well in many districts.

New subsection (E) to Rule 17(c)(2) provides that upon a showing of good cause a court must permit a party to file ex parte a required motion for a subpoena under Rule 17(c). The proposed amendment uses mandatory language to avoid any possibility that an individual judge, or a court in a local rule, could prohibit ex parte motions. New (c)(2)(F) also states that a party has no duty to inform the other parties about a subpoena when no motion is required, absent an order to do so.

(5) *Place of Production*

New Rule 17(c)(5) clarifies the circumstances that require a subpoena recipient to produce the designated items to the court rather than to the requesting party. This is yet another issue that has divided courts interpreting the rule's existing text in Rule 17(c)(1). Some courts read the rule as requiring recipients of all subpoenas to produce the designated items to the court. Others regularly permit returns directly to the party seeking the items. The revised text again adopts a default rule, mandating returns to the court if the requesting party is self-represented, unless the court orders otherwise. It also makes returns to a party's counsel discretionary, allowing courts to determine when they wish to receive and review subpoenaed materials before receipt by counsel.

(6) *Preserving Disclosure Policies in Rule 16*

New Rule 17(c)(6) resolves another dispute about the meaning of the rule's existing text, which some courts have read to allow them to order a subpoena recipient to provide all items received to the opposing party, regardless of whether they would be subject to discovery under Rule 16.

The Advisory Committee recognized that the policies regulating disclosure between parties have been carefully codified in Rule 16 and other discovery rules. Rule 17(c) should not modify them. Accordingly, the new text states that disclosure of information and other items between parties, including information and items a party may obtain by subpoena, is regulated by Rule 16 and other discovery rules.

(7) *Clarifying Which Provisions Apply to Different Proceedings*

To improve clarity and avoid confusion, the amendments clearly indicate what types of proceedings are governed by each subdivision in Rule 17:

Subdivision (a) applies to all subpoenas: those to testify and those to produce material, and to grand jury and non-grand-jury subpoenas.

Subdivision (b) applies only to subpoenas to testify.

Subdivision (c) applies only to subpoenas to produce designated items. Within subdivision (c), paragraphs (2) through (6) apply only to non-grand-jury subpoenas.

Subdivisions (d) and (e) regarding service apply to both subpoenas for testimony and subpoenas to produce designated items.

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PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE[1]

Rule 17. Subpoena

(a) ~~Content~~ In General. A subpoena must state the court's name and the proceeding's title ~~of the proceeding~~, include the court's seal ~~of the court~~, and ~~command~~ require the ~~witness~~ recipient to attend and testify or produce designated items at ~~the~~ a specified time and place ~~the subpoena specifies~~. The clerk must issue a blank subpoena—signed and sealed—to the ~~party~~ requesting ~~it, and that~~ party, who must fill in the blanks before the subpoena is served.

(b) Subpoena to Testify—Defendant Unable to Pay Costs and Witness Fees. Upon a defendant's ex parte application, the court must order that a subpoena be issued for a named witness if the

[1] New material is underlined in red; matter to be omitted is lined through.

defendant shows ~~an inability to pay the witness's fees and~~ the necessity of the witness's presence for an adequate defense~~. If the court orders a subpoena to be issued, the~~ and an inability to pay the witness's fees. The process costs and witness fees will then be paid ~~in the same manner~~ as ~~those paid~~they are for witnesses ~~the~~ responding to government subpoenas.

(c) ~~**Producing Documents and**~~ **Subpoena to Produce Data, Objects, or Other Items.**

(1) ***In General—Items Obtainable.*** A subpoena may ~~order~~ require the ~~witness~~ recipient to produce any ~~books, papers, documents,~~ item, including any data or information or any book, paper, document, or other ~~objects the subpoena designates~~ object. ~~The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items~~

~~arrive, the court may permit the parties and their attorneys to inspect all or part of them.~~

(2) ~~***Quashing or Modifying the Subpoena.*** On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.~~ ***Non-Grand-Jury Subpoena—When Available; Required Content and Limitations; Issuance; Disclosure.***

(A) *When Available.* A non-grand-jury subpoena is available for a trial; for a hearing on detention, suppression, sentencing, or revocation; or—with the court's permission in an individual case—for any additional evidentiary hearing.

(B) *Required Content and Limitations.* The subpoena must describe each

designated item with reasonable particularity and seek only items that:

(i) are likely to be possessed by the subpoena's recipient;

(ii) are not reasonably available to the party from another source; and

(iii) are, or contain information that is, likely to be admissible as evidence in the designated proceeding.

(C) *Motion and Order Not Ordinarily Required.* A motion and order are not required before service of a non-grand-jury subpoena unless (3) or (4), a local rule, or a court order requires them.

(D) *Necessary Showing In a Required Motion.* The movant must:

(i) describe each designated item with reasonable particularity; and

(ii) state facts showing that each item satisfies (2)(B) (i)-(iii).

(E) *Ex-Parte Motion.* The court must, for good cause, permit the party to file the motion ex parte.

(F) *Disclosure When No Motion Is Required.* When no motion is required, a party need not disclose to any other party that it is seeking or has served the subpoena, unless a local rule or court order provides otherwise.

(3) ***Non-Grand-Jury Subpoena for Personal or Confidential Information About a Victim.***

(A) *Motion and Order Required.* After a complaint, indictment, or information is filed, a non-grand-jury subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order upon motion. ~~Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.~~

(B) *Notice to a Victim*. Unless there are exceptional circumstances, the court must, before entering the order,

require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(4) ***Subpoena by a Self-Represented Party.*** A subpoena is available to a self-represented party only after the party:

(A) files a motion;

(B) makes the showing described in (2)(D); and

(C) obtains an order.

(5) ***Place to Produce the Designated Items.*** Unless the court orders otherwise, a subpoena requested by a self-represented party must require the recipient to produce the designated items to the court. A non-grand-jury subpoena requested by a represented

party may require the recipient to produce the designated items to that party's counsel.

(6) ***Disclosing to Other Parties the Items Received.*** A party must disclose to an opposing party an item the party receives from a subpoena's recipient only if the item is discoverable.

(7) ***Quashing or Modifying the Subpoena.*** On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive. A party responding to a motion to quash a non-grand-jury subpoena must make the showing described in (2)(D).

(d) Service. A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy ~~of the subpoena~~ to the witness or to the subpoena's

recipient and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. But the ~~The~~ server need not tender the attendance fee or mileage allowance if ~~when~~ the United States, a federal officer, or a federal agency has requested the subpoena.

(e) Place of Service.

(1) ***In the United States***. A subpoena requiring a witness to attend a hearing or trial—or requiring a recipient to produce designated items—may be served at any place within the United States.

(2) ***In a Foreign Country.*** If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.

(f) ~~Issuing~~Subpoena for a Deposition ~~Subpoena~~.

(1) ***Issuance.*** A court order to take a deposition authorizes the clerk in the district where the

deposition is to be taken to issue a subpoena for any witness named or described in the order.

(2) ***Place.*** After considering the convenience of the witness and the parties, the court may order—and the subpoena may require—the witness to appear anywhere the court designates.

(g) Contempt Order for Disobeying a Subpoena. The court (other than a magistrate judge) may hold in contempt a witness or subpoena recipient who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. ~~A~~Under 28 U.S.C. § 636(e), a magistrate judge may hold in contempt a witness or subpoena recipient who, without adequate excuse, disobeys a subpoena issued by that magistrate judge ~~as provided in 28 U.S.C. § 636(e)~~.

(h) Information Not Subject to a Subpoena. No party may subpoena a statement of a witness or of a prospective witness under this rule. Rule 26.2 governs the production of the statement.

Committee Note

The amendments to Rule 17 respond to gaps and ambiguities in its text that have contributed to conflicting interpretations in the courts and difficulties in application. The changes include revisions that clarify the procedures for subpoenas to produce data, objects, or other items and the availability of such subpoenas for proceedings other than trial, as well as revisions that delineate which provisions apply to certain types of subpoenas. The amendments also include stylistic revisions to text and headings.

Rule 17(a). In addition to stylistic changes, the text in (a)(1) has been revised to clarify that it applies to subpoenas for producing items as well as those for testimony.

Rule 17(b) formerly headed "Defendant Unable to Pay," has been retitled to clarify that it applies only to subpoenas for testimony. Changes to the text are stylistic only.

Rule 17(c), covering subpoenas to produce data, objects, or other items, has been revised to address multiple issues with the prior language that had contributed to conflicting interpretations in the courts. Formerly it had three subsections, now it has seven. The changes are intended to promote clarity about what the Rule requires, while safeguarding the discretion of courts to tailor subpoena

practice to the circumstances of a district or case. The section's heading —"Subpoena to Produce Information, Objects, or Other Items"—has been revised to more accurately describe the amended language in (c)(1).

Rule 17(c)(1) continues to describe what a subpoena may obtain, but it has been revised to refer to "items" that include not only data, but also any "information" or objects. This recognizes that parties use subpoenas to obtain electronically stored information and other intangible items in addition to "data," "documents" or other objects.

Perceived ambiguities in the language of the last two sentences of former (c)(1) contributed to several conflicts in case law, including when a subpoena may be sought ex parte, and the rules for production and disclosure. The revised rule replaces these two sentences with separate provisions containing explicit direction about each of these issues.

Rule 17(c)(2) is new. The language formerly in (c)(2) about motions to quash is now (c)(7). **Subparagraph (2)(A)** clarifies that non-grand-jury subpoenas are available to produce items for trial as well as proceedings where subpoenas are most likely to be needed, presently used regularly in many districts, or for which there is statutory or rule authority for parties to present evidence: detention hearings under the Bail Reform Act, sentencing hearings under Rule 32, pre-trial suppression hearings, and revocations. There is no other mechanism available to compel evidence from third parties at these proceedings, even though both parties may need to do so. Some decisions have interpreted the prior text of the Rule to bar the use of Rule 17 subpoenas to produce items at any hearing other than grand jury proceedings and trial. This change to the Rule's text expressly authorizes the use of a non-grand-jury

subpoena to obtain evidence for introduction at the listed hearings.

The ending clause explicitly recognizes the discretion of the court in an individual case to permit a Rule 17 subpoena to produce items in other evidentiary hearings not listed in the Rule in which a party may be allowed to present witnesses or evidence. Examples include preliminary hearings and new trial hearings. The present use of Rule 17 subpoenas for items in such proceedings is not as common, in part because of the difficulties, costs, and delays that may arise when subpoena practice is imported into these less formal or more expedited proceedings.

Rule 17's provisions are not applicable to hearings under § 2254, where a court may apply subpoena provisions in the Federal Rules of Civil Procedure. *See* Rule 12 of the Rules Governing § 2254 Proceedings. Rule 12 of the Rules Governing §2255 Proceedings allows application of either the Civil or Criminal Rules in § 2255 proceedings.

Subparagraph (c)(2)(B), along with the requirements in **(c)(2)(D),** articulates a modified version of the test announced by the Supreme Court in *Nixon v. United States,* 418 U.S. 683 (1974), which interpreted the previous text of Rule 17. Applying *Nixon,* all but a handful of lower courts have read Rule 17 as limiting non-grand-jury subpoenas to produce documents or other items to those that met specificity, relevance, and admissibility requirements. Many courts added one or more of the additional following criteria: that the items sought were not otherwise obtainable by due diligence, that advance inspection was needed to properly prepare and avoid delay, and that the subpoena was not a "fishing expedition."

The Committee agreed that the basic character of Rule 17 subpoenas as seeking evidence for a particular

proceeding should remain unchanged, and that the rule should continue to prohibit the use of subpoenas for general discovery from third parties. But it also determined that the admissibility requirement, as well as other aspects of the prevailing interpretation of the prior language, was being applied inconsistently, resulting in harmful uncertainty and unnecessarily restricted access to evidence needed from third parties for trial and other proceedings.

The new text now codifies a modified version of the *Nixon* standard intended to provide an adequate and more predictable opportunity for both the prosecution and defense to obtain from third parties the evidence they need for the proceeding designated in the subpoena. The new text imposes upon a party the duty to ensure that every subpoena to produce items meets this standard, including those obtained and served without motion.

As to specificity and the prevention of "fishing expeditions," **(c)(2)(B)** first requires that the subpoena "describe each designated item with reasonable particularity." This requirement serves at least two functions. First, it informs the recipient what is being requested so that the recipient can decide how to comply and whether to file a motion to quash. Second, it prevents parties from using such subpoenas for discovery and "fishing expeditions," which can create unacceptable burdens for recipients, courts, and those individuals and entities whose information the recipient is ordered to produce. The requirements in **(c)(2)(B)(i) and (ii)** advance this same goal by limiting the subpoena to items "likely to be possessed by the subpoena's recipient," and "not reasonably available to the party from another source."

The text of **(c)(2)(B)(iii)** requires that each item either be, or contain information that is, "likely to be

admissible as evidence in the designated proceeding." In using "*likely* to be admissible," the Committee deliberately rejected stricter formulations applied by some courts. In some circumstances, it will be impossible to be certain *before* a proceeding begins that a precisely identified item will be admissible. Such circumstances include when an item's admissibility depends on whether the opposing party first presents other evidence. For example, impeachment evidence should be available to a party by subpoena for use at trial when a party knows that a witness will or is likely to testify. That evidence should not be unavailable simply because admissibility cannot be determined definitively until after the witness has actually testified. The "likely to be admissible" standard is already used by some courts applying Rule 17 and more accurately describes the appropriate inquiry. There is no separate reference to "relevance" in **(c)(2)(B)** because it is not likely that information would be admissible unless it was relevant.

If a court is concerned that without judicial oversight some categories of subpoenas—such as those seeking particular types of information, or seeking information for a particular type of proceeding—pose a special risk of noncompliance with the requirements in (c)(2)(B), the court has discretion to require that those subpoenas be authorized by court order upon motion (*see* (c)(2)(C)) and/or to order that the recipient produce the items to the court instead of directly to the requesting party's counsel (*see* (c)(5)).

The provisions in **Subparagraphs (c)(2)(C)-(F)** resolve several disputed issues about obtaining subpoenas to produce items that arose under the prior language of the Rule**.**

Rule 17(c)(2)(C) defines when a motion and court order are required before a party may serve a non-grand-jury

subpoena to produce items. Courts have disagreed about if or when the former language in (c)(1)—which stated "the court may direct the witness to produce the designated items in court before trial or before they are offered in evidence"—required a court to first approve a subpoena under 17(c). The resulting practice has differed greatly from court to court (and in some cases judge to judge), with some courts requiring motions for every subpoena to produce items, others permitting parties to obtain and serve such subpoenas without judicial involvement (unless the subpoena sought victim information under (c)(3)), and still others insisting on prior approval in certain circumstances but not others.

The Committee concluded that mandating a motion and court order for every subpoena to produce items—or for every subpoena that seeks production before trial, as some courts had interpreted the former language in (a)—places unnecessary burdens on courts and parties alike and is contrary to existing practice in many districts. Other requirements stated in the Rule or otherwise available to the court, such as protective orders, are adequate to control potential abuse of the subpoena process by the parties. Districts that have required, under the prior language of the rule, a motion and court order whenever a subpoena seeks production prior to trial may continue that practice by local rule or court order. That level of judicial oversight before service, however, is no longer required by the revised text of the Rule.

The amended rule clearly specifies the circumstances that will always require prior court approval via motion, and it preserves the discretion of judges to require motions in other situations. It provides that a motion and order are not required before service of a non-grand-jury subpoena to produce items "unless (3) or (4), a local rule, or a court order requires them."

Rule 17(c)(2)(D). When a motion is required for a non-grand-jury subpoena, new (c)(2)(D) states exactly what a party must do in the motion to prove that the proposed subpoena does indeed comply with (c)(2)(B)'s requirements. Rule 17(c)**(**2)(D)(i) requires the party to demonstrate to the court that the subpoena describes each designated item with reasonable particularity. And **(**2)(D)(ii) requires the party to "state facts," showing each item is "likely to be possessed by the subpoena's recipient," "not reasonably available to the party from another source," and "likely to be admissible as evidence in the designated proceeding." Requiring a factual basis is intended to prevent the use of Rule 17 subpoenas based upon unsubstantiated guesses or mere speculation.

Rule 17(c)(2)(E) ensures that a court must, for good cause, allow a party to file a motion for a subpoena to produce items ex parte. Whether a party may seek a subpoena ex parte has been another contested question under the prior language of Rule 17(c). Although some courts have read the Rule to preclude ex parte subpoena practice, most allow it, some by local rule. Proceeding ex parte is important when disclosure to another party of what the subpoena requests, the identity of the recipient, or the explanation why the subpoena complies with (c)(2)(B) could lead to damage to or loss of the items that the party is attempting to obtain, or divulge trial strategy, witness lists, or attorney work-product. Without the ex parte option, defense counsel may face the impossible choice of either not seeking a subpoena and violating the ethical duty to prepare a plausible defense, or seeking the subpoena and disclosing their trial strategy, work-product, and other confidential information to the government and co-defendants (who may have adverse interests).

Rule 17(c)(2)(F) clarifies that unless required by a local rule or court order, a party has no duty to inform the other parties about a subpoena when no motion is required.

Rule 17(c)(3) retains the requirement in former (c)(3) of a motion and court order for a subpoena seeking personal and confidential information about a victim, now in subparagraph (A), as well as the requirement of prior notice to a victim absent exceptional circumstances, now in subparagraph (B). Both requirements were added to the Rule in 2008 to implement the Crime Victim's Rights Act and are unchanged, except for the addition of style revisions, including adding the term "non-grand-jury" to (A).

Rule 17(c)(4). This new provision extends the motion requirement to a subpoena requested by a self-represented party. Two reasons underlie this decision. First, self-represented parties are not bound by ethical rules that deter an attorney's misuse of the court's compulsory authority, raising the risk that the subpoena would not comply with (c)(2)(B). Second, requiring judicial oversight of this very small subset of subpoenas would not significantly add to the courts' burden, even in districts where there is relatively little motion practice under Rule 17.

Rule 17(c)(5) is also new. It clarifies when a subpoena must order the recipient to produce designated items to the court, and when it need not do so. Again, the text in former (c)(1) stating that the "court may direct the witness to produce the designated items in court before trial or before they are to be offered into evidence" produced conflicting decisions on this point. Some courts read the rule as always requiring returns to the court, others that it required returns to the court whenever a subpoena ordered production before trial, and still others that it permitted returns directly to the requesting party unless the court ordered items produced to

it. The Committee concluded that judges should have discretion to determine where (and how) production should take place. To the extent the prior text of the rule was leading to unnecessary limits on the discretion of the court to allow returns to the requesting party, it created needless burdens for courts and required revision.

Accordingly, subsection (c)(5) sets two defaults, both subject to departure by court order. First, it provides that a subpoena requested by a self-represented party must require the recipient to produce the designated items to the court. Judicial oversight at both the issuance and production stages is added assurance that parties without legal training or ethical responsibilities will not deliberately or unintentionally access inappropriate or non-compliant information that a judge would be able to intercept if the recipient were required to provide the items to the court. The second default in (5) is for all other non-grand-jury subpoenas, namely those sought by represented parties. It provides the subpoena may require the recipient to produce the designated items to that party's counsel, reflecting present practice in many districts. The rule places no restrictions on the court's discretion to vary from these default rules. For example, when a subpoena is likely to produce private or privileged information, it is common practice for courts to order in camera review before disclosure to anyone.

New **Rule 17(c)(6)** states, "A party must disclose to an opposing party an item the party receives from a subpoena's recipient only if the item is discoverable under these rules." This provision resolves another dispute about the meaning of the Rule's prior text, which some courts read as requiring that each party have access to any item that a subpoena recipient produces to another party. That position undermines the careful calibration of discovery and

disclosure in Rule 16 and other discovery rules. For example, even if every item produced by a subpoena is admissible, it does not follow that the requesting party will decide to use all of those items in its "case-in-chief at trial." And a defense subpoena may produce inculpatory evidence the government did not know about, as well as evidence the defense hopes to use at the designated proceeding. The new text recognizes that disclosure of information and other items between parties, including information and items the party may obtain by subpoena, is regulated by the Constitution, Rule 16, and other discovery rules. Rule 17 does not modify that carefully developed law.

Rule 17(c)(7) contains the text about motions to quash previously in (c)(2). A second sentence has been added clarifying that the showing described in new (c)(2)(D) must be made by the party responding to a motion to quash a non-grand-jury subpoena to produce items.

The second sentence of **Rule 17(d)** now includes the words "or to the subpoena's recipient" after "witness" to clarify that it applies to both subpoenas for testimony and subpoenas to produce items. The last sentence has been restyled, adding "But" at the beginning and replacing "when" with "if."

Rule 17(e)(1) contains an addition similar to that in (d) to clarify its application to subpoenas to produce items as well as subpoenas for testimony.

The heading of **Rule 17(f)** has been restyled.

Rule 17(g) includes three changes: (1) the heading has been revised to better describe its content; (2) "or subpoena recipient" has been added to clarify its application to both subpoenas for testimony and subpoenas to produce

items; and (3) the reference to 28 U.S.C. §636 has been restyled.

Excerpt from the May 15, 2025 Report of the Advisory Committee on Evidence Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Jesse M. Furman, Chair
Advisory Committee on Evidence Rules

RE: Report of the Advisory Committee on Evidence Rules

DATE: May 15, 2025

I. Introduction

The Advisory Committee on Evidence Rules (the "Committee") met on May 2, 2025, at the Administrative Office in Washington, D.C. * * * The Committee recommends * * * that two proposed amendments be released for public comment: an amendment to Rule 609 and a new Rule 707 to regulate machine-generated evidence.

* * * * *

II. Action Items

* * * * *

B. Proposed Amendments to Rule 609 for Release for Public Comment

The Committee recommended publication for public comment a modest proposed amendment to Rule 609(a)(1)(B), which currently allows for impeachment of criminal defendant witnesses with convictions not involving dishonesty or false statement if the probative value of the conviction in proving the witness's character for truthfulness outweighs the prejudicial effect. The proposed amendment approved by the Committee would result in the provision becoming somewhat more exclusionary. To be admitted, the probative value of the conviction would have to *substantially* outweigh its prejudicial effect. The amendment is narrower than other suggestions for change made to, and rejected by, the Committee in the last two years, namely a proposal to eliminate Rule 609 entirely and a proposal to delete Rule 609(a)(1), which would have meant that all convictions not involving falsity would be inadmissible to impeach a witness's character for truthfulness.

The Committee concluded that the amendment was warranted because a fair number of courts have misapplied the existing test to admit convictions that are either similar to the crime charged or otherwise inflammatory and because that error is not likely to be remedied through the normal appellate process. That is because the Supreme Court has held that a defendant may appeal an adverse Rule 609 ruling only if he or she takes the stand at trial, so appeals by defendants of adverse Rule 609 rulings are relatively rare.

The amendment, through its slightly more protective balancing test, would promote Congress's intent, which was to provide more protection to criminal defendants so that they would not be unduly deterred from exercising their rights to testify. The Committee believes that the tweak to the applicable balancing test would encourage courts to more carefully assess the probative value and prejudicial effect of convictions that are similar or identical to the crime charged, or that are otherwise inflammatory or less probative because they involve acts of violence. The proposal leaves intact Rule 609(a)(2), which governs admissibility of convictions involving dishonesty or false statement.

In addition, the Committee proposes a slight change to Rule 609(b), which covers older convictions. The rule is triggered when a conviction is over ten years old. That ten-year period begins running from the date of conviction or release from confinement, whichever is later. But the current rule does not specify the end date of the ten-year period. The absence of any guidance in the rule has led courts to apply varying dates, including the date of indictment for the trial at issue, the date that trial begins, and the date that the witness to be impeached actually testifies. The Committee approved a change to Rule 609(b) that would end the ten-year period on the date that the relevant trial begins. The Committee determined that the date of trial is the date that is most easily administered, the least amenable to manipulation, and that it is a proper date for determining the credibility of a witness who is going to testify at the trial.

At its meeting, the Committee, by a vote of 8-1, recommended the proposed amendments to Rule 609 for release for public comment. The Department of Justice voted in favor of the proposal.

The Committee recommends that the proposed amendments to Rule 609, and the accompanying Committee Note—which are attached to this Report—be released for public comment.

C. Proposed New Rule 707 to Regulate Machine-Generated Evidence for Release for Public Comment

For the past three years, the Committee has been researching and investigating whether the existing Evidence Rules are sufficient to assure that evidence created by artificial intelligence ("AI") will be properly regulated for reliability and authenticity. The Committee has determined that there are two evidentiary challenges raised by AI: (1) evidence that is a product of machine learning, which would be subject to Rule 702 if propounded by witness; and (2) audiovisual evidence that is not authentic because it is a difficult-to-detect deepfake.

At its Fall meeting, the Committee considered proposals to amend the Evidence Rules to regulate machine learning and deepfakes. As to machine learning, the concern is that it might be unreliable, and yet the unreliability will be buried in the program and difficult to detect. The hearsay rule is likely to be inapplicable because the solution to hearsay is cross-examination, and a machine cannot be cross-examined. The Committee determined that the reliability issues attendant to machine output are akin to those raised by experts under Rule 702. Indeed, Rule 702 would be applicable to machine-learning if it was used by a testifying expert to reach her conclusion. But Rule 702 is not clearly applicable if the machine output is admitted without any expert testimony – either directly or by way of a lay witness.

After extensive discussion, the Committee has determined that a new rule of evidence may be appropriate to regulate the admissibility of machine evidence that is introduced without the testimony of any expert. The Committee concluded that amending Rule 702 itself would not be workable, for two reasons: (1) that Rule was just amended in 2023; (2) it is a rule of general applicability, and a separate subdivision dealing with machine evidence would be inappropriately specific and difficult to draft. The Committee's solution was to draft a new Rule 707 providing that if machine-generated evidence is introduced without an expert witness, and it would be considered expert testimony if presented by a witness, then the standards of Rule 702(a)-(d) are applicable to that output. Examples of such possibilities include machine output analyzing stock trading patterns to establish causation; analysis of digital data to determine whether two works are substantially similar in copyright litigation; and machine learning that assesses the complexity of software programs to determine the likelihood that code was misappropriated. In all these examples, it is possible that the machine output may be offered through a lay witness, or directly with a certification of authenticity under Rule 902(13). The Committee is of the opinion that, in such instances, a showing of reliability must be made akin to that required under Rule 702.

The rule provides that it does not apply to the output of basic scientific instruments, and the Committee Note provides examples of such instruments, such as a mercury-based

thermometer, an electronic scale, or a battery-operated digital thermometer. The Committee concluded that such an exception is warranted to avoid litigation over the output of instruments that can be presumed reliable but that, given the wide range of potential instruments and technological change, it is better to leave it to judges to determine whether a particular instrument falls within the exception than to try to be more specific in the rule. The Committee Note also provides that the rule not apply to output that can be judicially noticed as reliable.

The Committee agreed that disclosure issues relating to machine learning would be better addressed in the Civil and Criminal Rules, not the Evidence Rules. General language about the importance of advance notice before offering machine-generated evidence was added to the Committee Note.

At its meeting, the Committee, by a vote of 8-1, recommended the proposal to add a new Rule 707 for release for public comment. The Department of Justice voted against the proposal.

The Committee recommends that the proposed new Rule 707, and the accompanying Committee Note—which are attached to this Report—be released for public comment.

It is important to note that the Committee is not treating release for public comment as a presumption that the rule should be enacted. The Committee believes that it will receive critically important information during the public comment period about the need for this new rule and that it will get input from experts on the kinds of machine-generated information that should be subject to the rule or that should be exempt from the rule. Given the fast-developing field of AI, and the limits of the Committee's expertise on matters of technology, the Committee believes that the best way to obtain the necessary information to support or reject the rule is through public comment—which is sure to be extensive.

* * * * *

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE[1]

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence

[1] New material is underlined in red; matter to be omitted is lined through.

substantially outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement.

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed ~~since~~ between the witness's conviction or release from confinement for it~~,~~ (whichever is later) and the date that the trial begins. Evidence of the conviction is admissible only if:

(1) the probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

* * * * *

Committee Note

Rule 609(a)(1)(B) has been amended to provide that a non-falsity-based conviction should not be admissible to impeach a criminal defendant unless its probative value *substantially* outweighs the risk of unfair prejudice to the defendant. Congress allowed such impeachment with non-falsity-based convictions under Rule 609(a)(1), but imposed a reverse balancing test when the witness was the accused. That test is more protective so as not to infringe on the accused's constitutional right to testify. The amendment underscores the importance of applying a protective balance. The amendment also makes the balancing test consistent with that in Rule 703. Courts are familiar with the formulation "substantially outweighs" as the same phrase is used throughout the rules of evidence to describe various balancing tests. Cf. Rule 403.

If a conviction is inadmissible under this rule, it is inappropriate to allow a party, under Rule 608(b), to inquire into the specific instances of conduct underlying that conviction. Rule 608 permits impeachment only by specific acts that have not resulted in a criminal conviction. Evidence

relating to impeachment by way of criminal conviction is treated exclusively under Rule 609.

Nothing in this rule prohibits the use of convictions to impeach by way of contradiction. Such impeachment is governed by Rule 403. So for example, if the witness affirmatively testifies that he has never had anything to do with illegal drugs, a prior drug conviction may be admissible for purposes of contradiction even if not admissible under Rule 609. *See United States v. Castillo*, 181 F.3d 1129 (9th Cir. 1999) (unequivocal denial of involvement with drugs on direct examination warranted admission of the witness's drug activity under Rule 403).

A number of courts have, in a kind of compromise, admitted only the fact of a conviction to impeach a defendant in a criminal case. Thus the jury hears only that the defendant was convicted of a felony, not what the crime was. Absent agreement by the parties, that solution is problematic because convictions falling within Rule 609(a)(1) have varying probative value, and admitting only the fact of conviction deprives the jury of the opportunity to properly weigh the conviction's effect on the witness's character for truthfulness.

In addition, Rule 609(b) has been amended to set an endpoint by which the rule's 10-year period is to be measured. The lack of such an endpoint in the existing rule has led courts to apply various endpoints, including the date of the charged offense, the date of indictment, the date of trial, and the date the witness testifies. The rule provides for

the date that trial begins as the endpoint, as that is a clear and objective date and it is the time at which the factfinder begins to analyze the truthfulness of witnesses.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE[1]

Rule 707. Machine-Generated Evidence

When machine-generated evidence is offered without an expert witness and would be subject to Rule 702 if testified to by a witness, the court may admit the evidence only if it satisfies the requirements of Rule 702(a)-(d). This rule does not apply to the output of simple scientific instruments.

Committee Note

Expert testimony in modern trials increasingly relies on software- or other machine-based conveyances of information. Machine-generated evidence can involve the use of a computer-based process or system to make predictions or draw inferences from existing data. When a machine draws inferences and makes predictions, there are concerns about the reliability of that process, akin to the reliability concerns about expert witnesses. Problems include using the process for purposes that were not intended (function creep); analytical error or incompleteness; inaccuracy or bias built into the underlying data or formulas; and lack of interpretability of the machine's process. Where a testifying expert relies on such a method, that method—and the expert's reliance on it—will be scrutinized under Rule 702. But if machine or software output is presented

[1] New material is underlined in red.

without the accompaniment of a human expert (for example through a witness who applied the program but knows little or nothing about its reliability), Rule 702 is not obviously applicable. Yet it cannot be that a proponent can evade the reliability requirements of Rule 702 by offering machine output directly, where the output would be subject to Rule 702 if rendered as an opinion by a human expert. Therefore, new Rule 707 provides that if machine output is offered without the accompaniment of an expert, and where the output would be treated as expert testimony if coming from a human expert, its admissibility is subject to the requirements of Rule 702(a)-(d).

The rule applies when machine-generated evidence is entered directly, but also when it is accompanied by lay testimony. For example, the technician who enters a question and prints out the answer might have no expertise on the validity of the output. Rule 707 would require the proponent to make the same kind of showing of reliability as would be required when an expert testifies on the basis of machine-generated information.

If the machine output is the equivalent of expert testimony, it is not enough that it is self-authenticated under Rule 902(13). That rule covers authenticity, but does not assure reliability under the preponderance of the evidence standard applicable to expert testimony.

This rule is not intended to encourage parties to opt for machine-generated evidence over live expert witnesses. Indeed the point of this rule is to provide reliability-based protections when a party chooses to proffer machine-generated evidence instead of a live expert.

It is anticipated that a Rule 707 analysis will usually involve the following, among other things:

- Considering whether the inputs into the process are sufficient for purposes of ensuring the validity of the resulting output. For example, the court should consider whether the training data for a machine learning process is sufficiently representative to render an accurate output for the population involved in the case at hand.

- Considering whether the process has been validated in circumstances sufficiently similar to the case at hand.

The final sentence of the rule is intended to give trial courts sufficient latitude to avoid unnecessary litigation over the output from simple scientific instruments that are relied upon in everyday life. Examples might include the results of a mercury-based thermometer, an electronic scale, or a battery-operated digital thermometer. Moreover, the rule does not apply when the court can take judicial notice that the machine output is reliable. *See* Rule 201.

The Rule 702(b) requirement of sufficient facts and data, as applied to machine-generated evidence, should focus on the information entered into the process or system that leads to the output offered into evidence.

Because Rule 707 applies the requirements of admitting expert testimony under Rule 702 to machine-generated output, the notice principles that would be applicable to expert opinions and reports of examinations and tests should be applied to output offered under this rule.

APPENDIX

§ 440 Procedures for Committees on Rules of Practice and Procedure

This section contains the "Procedures for the Judicial Conference's Committee on Rules of Practice and Procedure and Its Advisory Rules Committees," last amended in September 2011. JCUS-SEP 2011, p. 35.

§ 440.10 Overview

The Rules Enabling Act, 28 U.S.C. §§ 2071–2077, authorizes the Supreme Court to prescribe general rules of practice and procedure and rules of evidence for the federal courts. Under the Act, the Judicial Conference must appoint a standing committee, and may appoint advisory committees to recommend new and amended rules. Section 2073 requires the Judicial Conference to publish the procedures that govern the work of the Committee on Rules of Practice and Procedure (the "Standing Committee") and its advisory committees on the Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure and on the Evidence Rules. *See* 28 U.S.C. § 2073(a)(1). These procedures do not limit the rules committees' authority. Failure to comply with them does not invalidate any rules committee action. *Cf.* 28 U.S.C. § 2073(e).

§ 440.20 Advisory Committees

§ 440.20.10 Functions

Each advisory committee must engage in "a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use" in its field, taking into consideration suggestions and recommendations received from any source, new statutes and court decisions affecting the rules, and legal commentary. *See* 28 U.S.C. § 331.

§ 440.20.20 Suggestions and Recommendations

Suggestions and recommendations on the rules are submitted to the Secretary of the Standing Committee at the Administrative Office of the United States Courts, Washington, D.C. The Secretary will acknowledge the suggestions or recommendations and refer them to the appropriate advisory committee. If the Standing Committee takes formal action on them, that action will be reflected in the Standing Committee's minutes, which are posted on the judiciary's rulemaking website.

§ 440.20.30 Drafting Rule Changes

(a) Meetings

Each advisory committee meets at the times and places that the chair designates. Advisory committee meetings must be open to the public, except when the committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the reason. Each meeting must be preceded by notice of the time and place, published in the *Federal Register* and on the judiciary's rulemaking website, sufficiently in advance to permit interested persons to attend.

(b) Preparing Draft Changes

The reporter assigned to each advisory committee should prepare for the committee, under the direction of the committee or its chair, draft rule changes, committee notes explaining their purpose, and copies or summaries of written recommendations and suggestions received by the committee.

(c) Considering Draft Changes

The advisory committee studies the rules' operation and effect. It meets to consider proposed new and amended rules (together with committee notes), whether changes should be made, and whether they should be submitted to the Standing Committee with a recommendation to approve for publication. The submission must be accompanied by a written report explaining the advisory committee's action and its evaluation of competing considerations.

§ 440.20.40 Publication and Public Hearings

(a) Publication

Before any proposed rule change is published, the Standing Committee must approve publication. The Secretary then arranges for printing and circulating the proposed change to the bench, bar, and public. Publication should be as wide as possible. The proposed change must be published in the *Federal Register* and on the judiciary's rulemaking website. The Secretary must:

(1) notify members of Congress, federal judges, and the chief justice of each state's highest court of the proposed change, with a link to the judiciary's rulemaking website; and

(2) provide copies of the proposed change to legal-publishing firms with a request to timely include it in publications.

(b) Public Comment Period

A public comment period on the proposed change must extend for at least six months after notice is published in the *Federal Register*, unless a shorter period is approved under paragraph (d) of this section.

(c) Hearings

The advisory committee must conduct public hearings on the proposed change unless eliminating them is approved under paragraph (d) of this section or not enough witnesses ask to testify at a particular hearing. The hearings are held at the times and places that the advisory committee's chair determines. Notice of the times and places must be published in the *Federal Register* and on the judiciary's rulemaking website. The hearings must be transcribed. Whenever possible, a transcript should be produced by a qualified court reporter.

(d) Expedited Procedures

The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained. The Standing Committee may also eliminate public notice and comment for a technical or conforming amendment if the Committee determines that they are unnecessary. When an exception is made, the chair must advise the Judicial Conference and provide the reasons.

§ 440.20.50 Procedures After the Comment Period

(a) Summary of Comments

When the public comment period ends, the reporter must prepare a summary of the written comments received and of the testimony presented at public hearings. If the number of comments is very large, the reporter may summarize and aggregate similar individual comments, identifying the source of each one.

(b) Advisory Committee Review; Republication

The advisory committee reviews the proposed change in light of any comments and testimony. If the advisory committee makes substantial changes, the proposed rule should be republished for an additional period of public comment unless the advisory committee determines that republication would not be necessary to achieve adequate public comment and would not assist the work of the rules committees.

(c) Submission to the Standing Committee

The advisory committee submits to the Standing Committee the proposed change and committee note that it recommends for approval. Each submission must:

(1) be accompanied by a separate report of the comments received;

(2) explain the changes made after the original publication; and

(3) include an explanation of competing considerations examined by the advisory committee.

§ 440.20.60 Preparing Minutes and Maintaining Records

(a) Minutes of Meetings

The advisory committee's chair arranges for preparing the minutes of the committee meetings.

(b) Records

The advisory committee's records consist of:

- written suggestions received from the public;
- written comments received from the public on drafts of proposed rules;
- the committee's responses to public suggestions and comments;
- other correspondence with the public about proposed rule changes;
- electronic recordings and transcripts of public hearings (when prepared);
- the reporter's summaries of public comments and of testimony from public hearings;
- agenda books and materials prepared for committee meetings;
- minutes of committee meetings;
- approved drafts of rule changes; and
- reports to the Standing Committee.

(c) Public Access to Records

The records must be posted on the judiciary's rulemaking website, except for general public correspondence about proposed rule changes and electronic recordings of hearings when transcripts are prepared. This correspondence and archived records are maintained by the AO and are available for public inspection. Minutes of a closed meeting may be made available to the public but with any deletions necessary to avoid frustrating the purpose of closing the meeting under § 440.20.30(a).

§ 440.30 Standing Committee

§ 440.30.10 Functions

The Standing Committee's functions include:

(a) coordinating the work of the advisory committees;

(b) suggesting proposals for them to study;

(c) considering proposals they recommend for publication for public comment; and

(d) for proposed rule changes that have completed that process, deciding whether to accept or modify the proposals and transmit them with its own recommendation to the Judicial Conference, recommit them to the advisory committee for further study and consideration, or reject them.

§ 440.30.20 Procedures

(a) Meetings

The Standing Committee meets at the times and places that the chair designates. Committee meetings must be open to the public, except when the Committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the

reason. Each meeting must be preceded by notice of the time and place, published in the *Federal Register* and on the judiciary's rulemaking website, sufficiently in advance to permit interested persons to attend.

(b) Attendance by the Advisory Committee Chairs and Reporters

The advisory committees' chairs and reporters should attend the Standing Committee meetings to present their committees' proposed rule changes and committee notes, to inform the Standing Committee about ongoing work, and to participate in the discussions.

(c) Action on Proposed Rule Changes or Committee Notes

The Standing Committee may accept, reject, or modify a proposed change or committee note, or may return the proposal to the advisory committee with instructions or recommendations.

(d) Transmission to the Judicial Conference

The Standing Committee must transmit to the Judicial Conference the proposed rule changes and committee notes that it approves, together with the advisory committee report. The Standing Committee's report includes its own recommendations and explains any changes that it made.

§ 440.30.30 Preparing Minutes and Maintaining Records

(a) Minutes of Meetings

The Secretary prepares minutes of Standing Committee meetings.

(b) Records

The Standing Committee's records consist of:

- the minutes of Standing Committee and advisory committee meetings;
- agenda books and materials prepared for Standing Committee meetings;
- reports to the Judicial Conference; and
- official correspondence about rule changes, including correspondence with advisory committee chairs.

(c) Public Access to Records

The records must be posted on the judiciary's rulemaking website, except for official correspondence about rule changes. This correspondence and archived records are maintained by the AO and are available for public inspection. Minutes of a closed meeting may be made available to the public but with any deletions necessary to avoid frustrating the purpose of closing the meeting under § 440.30.20(a).

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