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Litigation Alert

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Changes to Federal Rules of Civil Procedure, Appellate Procedure, and Bankruptcy Procedure, effective December 1, 2025

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New federal procedural rules took effect December 1, 2025. Here's what's changing—and why it matters.



What's the impact?

- The Federal Rules of Civil Procedure have been amended to ensure that the court establishes the method and timing of compliance with Rule 26(b)(5)(a) at the outset of litigation. A new Rule of Civil Procedure (16.1) has been added to provide a framework to address the unique case management challenges of multidistrict litigation.
- The Federal Rules of Appellate Procedure have been amended to clarify timing and procedure in bankruptcy appeals, and to respond to the request in *City of San Antonio v. Hotels.com*, 593 U.S. 330 (2021) to clarify the rule on allocation of costs on appeal.
- The Federal Rules of Bankruptcy Procedure have been amended to encourage greater degree of compliance and have added a process for a debtor to determine a mortgage claim's status.

Amendments to Federal Rules of Civil Procedure

Rules 26 and 16 of the Federal Rules of Civil Procedure have been amended, and a new Rule 16.1 has been added.

RULE 16(B)(3)(B)(IV) & RULE 26(F)(3)(D)

The amendments to Rules 16 and 26 are interrelated, and concern compliance with existing Rule 26(b)(5)(A). Rule 26(b)(5)(A) provides that when a party withholds privileged information during discovery, the party must “expressly make the claim” of privilege and “describe the nature” of the withheld material in a manner that will enable the other party to assess the claim.

Rule 26(f)(3)(D) is amended to specify that the parties’ discovery plan must include the parties’ views and proposals with respect to the method and timing to comply with Rule 26(b)(5)(A).

Relatedly, Rule 16(b)(3)(B)(iv) is amended to direct the Court to likewise include “the timing and method for complying with Rule 26(b)(5)(A)” in its Rule 16(b) scheduling order.

According to the Committee Notes, these changes were enacted because it is advantageous to address the specific procedural mechanism to withhold privileged material early in the process, before disputes arise. Additionally, the changes intentionally provide the parties and the court with flexibility to adopt a method of compliance that best serves the particular needs of the case at hand.

RULE 16.1

Rule 16.1 is a new rule that applies only to multidistrict litigation (MDL) proceedings, where one or more actions are consolidated for pretrial proceedings to promote fairness and efficiency. The Rule was adopted in recognition that MDL proceedings present unique case management challenges. Prior to Rule 16.1, the Rules of Civil Procedure made no reference to MDL proceedings.

Rule 16.1 in essence provides a framework for a case management conference, report, and order, that the court “should,” but is not required, to follow. The use of the word “should” rather than “must” is intentional, so that the court maintains flexibility and discretion to manage the MDL proceeding as it sees fit.

If the court schedules an initial management conference (Rule 16.1(a)), then it “should” also order the parties to submit a case management report prior to the conference (Rule 16.1(b)), and it “should” enter an initial management order after the conference (Rule 16.1(c)).

Rule 16.1(b) is the lengthiest portion of the Rule. It describes the contents of the parties’ report, which may be altered at the court’s discretion. Subsection (2) lists initial case management matters that the parties should address, including whether leadership counsel should be

appointed, whether previously entered scheduling orders should be vacated or modified, the scheduling of additional management conferences, and how to address the filing of new actions in the MDL proceeding or related actions in other courts.

Subsection (3) requests the parties' "initial views" on certain matters, including consolidated pleadings, exchanging the factual bases for claims, discovery, anticipated pretrial motions, and the factual and legal issues to be presented, among other things. The division between Rule 16.1(b)(2) and Rule 16.1(b)(3) is made in recognition that the issues raised in subsection (b)(3) will likely be premature to consider prior to appointment of leadership counsel. Finally, subsection (4) is a general catchall provision for the parties to raise any other matters that warrant the court's attention.

Those who are frequently involved in multidistrict litigation should familiarize themselves with these rules going forward.

Amendments to Federal Rules of Appellate Procedure

Updates to the Federal Rules of Appellate Procedure include amendments to Rule 6, governing bankruptcy appeals, and Rule 39, concerning costs on appeal.

RULE 6

The amendments to Rule 6 include both minor stylistic and clarifying changes, as well as substantive changes to subdivision 6(a) and 6(c).

Rule 6(a) addresses bankruptcy appeals where the district court exercised original jurisdiction. Rule 4(a)(4)(A) resets the time to appeal if post-judgment motions are timely made in district court. The amendment clarifies that the time to file post-judgment motions that can reset the time to appeal is controlled by the Federal Bankruptcy Rules, which have shorter deadlines than the Civil Rules. Under the Civil Rules, a timely motion must be made within 28 days of judgment, while under the Bankruptcy Rules, the equivalent motion must be made within 14 days of judgment.

The amendment also adds relevant sections to clarify the procedure for handling direct appeals from a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2). Previously, Rule 6(c) incorporated by reference most of Rule 5, which governs petitions for permission to appeal to the court of appeals from otherwise non-appealable district court orders. However, Rule 5 was not a perfect fit for direct appeals of bankruptcy court orders, resulting in inconsistency regarding application of Rule 5 to a Rule 6(c) direct appeal.

The substantive changes address this problem by making Rule 6(c) largely self-contained. Rule 6(c)(1) is amended to provide that Rule 5 is no longer applicable to Rule 6(c) direct appeals unless Rule 6(c) expressly refers to a specific provision of Rule 5. Finally, Rule 6(c)(2) is amended to

include the substance of the applicable provisions of Rule 5, modified to apply more clearly to Rule 6(c) direct appeals.

These amendments to Rule 6(c) dovetail with the amendment to Bankruptcy Rule 8006(g), discussed in detail below.

RULE 39

In *City of San Antonio v. Hotels.com*, 593 U.S. 330 (2021), the United States Supreme Court held that Rule 39, which governs costs on appeal, does not permit a district court to alter a court of appeals' allocation of the costs, even the costs taxed by the district court. The Court also observed that "the current Rules and the relevant statutes could specify more clearly the procedure that such a party should follow to bring their arguments to the court of appeals...." *Id.* at 344. This amendment does just that.

In subdivision (a), both the heading and the body of the Rule were amended to clarify that allocation of the costs among the parties is done by the court of appeals. The court may allow the default rules to operate based on the judgment, or it may allocate them differently based on the equities of the situation. Subdivision (a) is not concerned with calculating the amounts owed; it is concerned with who bears those costs, and in what proportion. The amendment also specifies that the default for mixed judgments will be that each party bears its own costs.

Subdivision (b) specifies a procedure for a party to ask the court of appeals to reconsider the allocation of costs established pursuant to subdivision (a). A party may do so by motion in the court of appeals within 14 days after the entry of judgment. To prevent delay, the mandate will not be stayed pending resolution of this motion, but the court of appeals retains jurisdiction to decide the motion after the mandate issues.

Subdivision (c) codifies *Hotels.com* and clarifies that the allocation of costs by the court of appeals governs the taxation of costs both in the court of appeals and in the district court.

Finally, subdivision (e) specifies which costs are taxable in the court of appeals and clarifies the procedure that governs the taxation.

Amendments to Federal Rules of Bankruptcy Procedure

There are also new updates to the Federal Rules of Bankruptcy Procedure. The Federal Rules of Bankruptcy Procedure are amended to include amendments to Rules 3002.1 and 8006.

RULE 3002.1

According to the Committee Notes, this rule was amended to encourage a greater degree of compliance with its provisions and amended to add an optional motion process the debtor or

case trustee can initiate to determine a mortgage claim's status while a chapter 13 case is pending. This is intended to give the debtor an opportunity to cure any post-petition defaults that may have occurred.

Some specific changes include revising subdivision (a) by removing the words "contractual installment" in order to broaden the rule's applicability to apply in cases where mortgages are paid according to the terms of plan and not the terms of a contract.

Subdivision (b) has also been amended to include detailed provisions concerning notice of a payment change in a home-equity line of credit. This provides that if a claim arises from a home equity line of credit, the notice of a payment change must be filed and served either as provided in (b)(1) or within one year after the bankruptcy-petition filing, and then at least annually. It also provides for the content of the annual notice, amounts of payments, and the effective date of new payment amounts. Finally, it also adds paragraph 3 concerning the effect of an untimely notice. Specifically, if the rules in subparagraphs (b)(1) and (b)(2) are not followed, the effective date of the new payment amount may change depending on if the new payment amount is higher or lower.

Subdivisions (c), (d), and (e) have been revised largely for clarity and the changes are mostly stylistic.

Additionally, a new subdivision (f) was added. This subdivision provides for a procedure whereby a trustee or debtor can file a motion to determine the status of any claim described in subdivision (a).

Subdivision (g) (previously (f)) was amended to set the time period to 45 days in which the trustee must file a notice once the debtor completes all payments due under a Chapter 13 plan. The amended rule also changes the procedures concerning a response to the notice filed by a claim holder, and the court's determination of a final cure and payment.

Finally, subdivision (h) (previously (i)), was amended to clarify that the listed sanctions are authorized in addition to any other sanctions that the rule authorizes the court to take if a claim holder fails to provide notice as required by the rule.

RULE 8006

Rule 8006 addresses the process for requesting an appeal go directly from bankruptcy court to the court of appeals. Subdivision (g) has been amended to clarify that any party to the appeal may ask the court of appeals to authorize a direct appeal.

The proposed amendment clarifies that any party to the appeal may file a request that a court of appeals authorizes a direct appeal. There is no obligation to do so if no party wishes the court of appeals to authorize a direct appeal.

Those with bankruptcy practices, specifically those heavily involved in Chapter 13 proceedings, should familiarize themselves with these new amendments and procedures to ensure they are followed going forward.

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