

**United States Bankruptcy Court
Eastern District of Missouri**



**Thomas F. Eagleton U. S. Courthouse
St. Louis, MO**

**Federal Rules of Bankruptcy Procedure
Summary of Amendments – Effective December 1, 2023**

The following summary details the amendments to the Federal Rules of Bankruptcy Procedure that have been approved by the United States Supreme Court and United States Congress and become effective on December 1, 2023. These amendments to the Federal Rules of Bankruptcy Procedure do not require changes to the Bankruptcy Court's Local Rules. A copy of this summary can be found on the Court's website at <http://www.moeb.uscourts.gov/rules-and-procedures>. Redline and clean copies of the amendments to the Federal Rules of Bankruptcy Procedure as well as a more detailed explanation of the amendments can be found on the United States Courts' website at: <https://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments>

1. Rule 3011 – Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13

- Rule 3011 is amended to require the clerk to provide searchable access on the court's website to information about unclaimed funds deposited with the court pursuant to 11 U.S.C. § 347(a).
- The court may limit access to information about such funds in a specific case for cause, including, for example, if such access risks disclosing the identity of

claimants whose privacy should be protected, or if the information about the unclaimed funds is so old as to be unreliable.

- Information concerning unclaimed funds deposited with the United States Bankruptcy Court for the Eastern District of Missouri can be accessed at: <https://www.moeb.uscourts.gov/unclaimed-funds>

Practice Point: Changes have been made to [Director's Form 1340 \(Application for Payment of Unclaimed Funds\)](#) to discourage fraudulent applications from people asserting they are a successor claimholder.

2. Rule 8003 – Appeal as of Right – How Taken; Docketing the Appeal

- Subdivision (a) is amended to conform to recent amendments to Fed. R. App. P. 3(c), which clarified that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment or appealable order or decree. These amendments reflect that a notice of appeal is supposed to be a simple document that provides notice that a party is appealing and invokes the jurisdiction of the appellate court. It therefore must state who is appealing, what is being appealed, and to what court the appeal is being taken. It is the role of the briefs, not the notice of appeal, to focus the issues on appeal.
- Subdivision (a)(3)(B) is amended to avoid the misconception that it is necessary or appropriate to identify each and every order of the bankruptcy court that the appellant may wish to challenge on appeal. It requires the attachment of “the judgment—or the appealable order or decree—from which the appeal is taken”—and the phrase “or the part of it” is deleted. In most cases, because of the merger principle, it is appropriate to identify and attach only the judgment or the appealable order or decree from which the appeal as of right is taken.
- Subdivision (a)(4) now calls attention to the merger principle.
 - The general merger rule can be stated simply: an appeal from a final judgment or appealable order or decree permits review of all rulings that led up to the judgment, order, or decree.
 - Because this general rule is subject to some exceptions and complications, the amendment does not attempt to codify the merger principle but instead leaves its details to case law.
 - The amendment does not change the principle established in *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202-03 (1988), that “a decision on

the merits is a ‘final decision’ . . . whether or not there remains for adjudication a request for attorney’s fees attributable to the case.”

- Subdivision (a)(5) is added to address the possible loss of appellate rights in the following situation. Sometimes a party aggrieved by a final judgment will file a motion in the bankruptcy court instead of immediately filing a notice of appeal. Rule 8002(b)(1) permits a party who files certain motions to await disposition of those motions before appealing. However, some courts treat a notice of appeal that identifies only the order disposing of such a motion as limited to that order, rather than bringing the final judgment before the appellate court for review.
 - Subdivision (a)(5) makes clear that the notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Rule 7058, if the notice identifies an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties or an order described in Rule 8002(b)(1).
- Subdivision (a)(6) is added to enable intentional limitations of the notice of appeal. It allows an appellant to identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, however, specific identifications do not limit the scope of the notice of appeal.
- Subdivision (a)(7) is added to provide that an appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into the judgment, order, or decree from which the appeal is taken.
 - This addition is meant to account for the scenario where a party files a notice of appeal after a judgment or appealable order or decree but identifies only a previously non-appealable order that merged into that judgment or appealable order or decree. Under subdivision (a)(7), a court should act as if the notice had properly identified the judgment or appealable order or decree in this situation.
 - In determining whether a notice of appeal was filed after the entry of judgment, Rules 8002(a)(2) and (b)(2) apply.

Practice Point: The pending changes to Rule 8003 require conforming changes to [Official Form 417A \(Notice of Appeal and Statement of Election\)](#).

3. Rule 9006 – Computing and Extending Time; Time for Motion Papers

- Rule 9006 is amended to add “Juneteenth National Independence Day” to the list of legal holidays listed in in Rule 9006(a)(6).

4. Rule 9038 – Bankruptcy Rules Emergency [NEW]

- New Rule 9038 provides authority to extend or toll the time limits in the Federal Rules of Bankruptcy Procedure during times of major emergencies affecting the bankruptcy courts. The continuing operation of the bankruptcy courts during the COVID-19 pandemic showed that the existing rules are flexible enough to accommodate remote proceedings, service by mail, and electronic transmission of documents. However, there is a need for greater flexibility to allow the extension of certain time periods in specific cases or any extension on a district-wide basis in response to an emergency than what Rule 9006(b) provides.
 - Subdivision (a) specifies the limited circumstances under which the authority conferred by this rule may be exercised. The Judicial Conference of the United States has the exclusive authority to declare a Bankruptcy Rules emergency, and it may do so only under extraordinary circumstances. Those circumstances must relate to public health or safety or affect physical or electronic access to a bankruptcy court. Importantly, the court’s ability to operate in compliance with the Bankruptcy Rules must be substantially impaired.
 - Subdivision (b)(1) requires a Bankruptcy Rules emergency declaration to specify the bankruptcy courts to which it applies. Instead of being nationwide, an emergency might be limited to one area of the country or even to a particular state. The declaration must also specify a termination date that is no later than 90 days from the declaration’s issuance. Subdivisions (b)(2) and (b)(3) allow for the time period to be extended by the issuance of additional declarations or reduced by early termination if circumstances change. The declaration must also specify any limitations placed on the authority granted in subdivision (c) to modify time periods.
 - Subdivisions (c)(1) and (c)(2) grant the authority, during declared Bankruptcy Rules emergencies, to extend or toll deadlines to the chief bankruptcy judge of a district on a district- or division-wide basis or to the presiding judge in specific cases. Unless limited by the emergency declaration, this authority extends to all time periods in the rules that are not also imposed by statute. It also applies to directives to take quick action, such as rule provisions that require action to be taken “promptly,” “forthwith,” “immediately,” or “without delay.”

- Subdivision (c)(3) addresses the termination of extensions and tolling and provides a “soft landing” upon the termination of a Bankruptcy Rules emergency. It looks to three possible dates for a time period to expire. An extended or tolled time period will terminate either 30 days after the rules-emergency declaration terminates or when the original time period would have expired, whichever is later—unless the extension or tolling itself expires sooner than 30 days after the declaration’s termination. In that case, the extended expiration date will apply.
- Subdivision (c)(4) allows fine tuning in individual cases of extensions of time or tollings that have been granted.
- Subdivision (c)(5) excepts from the authority to extend time periods any time provision imposed by statute. The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, does not authorize the Bankruptcy Rules to supersede conflicting laws. Accordingly, a time limit in a rule that is a restatement of a deadline imposed by statute or an incorporation by reference of such a deadline may not be extended under this rule. However, if a statute merely incorporates by reference a time period imposed by a rule, that period may be extended.