

Bankruptcy Official Forms and Rules Changes Effective December 1, 2014

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Please be advised there are significant changes in the bankruptcy rules and official forms effective December 1, 2014.

A. Bankruptcy Forms.

On September 16, 2014 the Judicial Conference of the United States, through its Committee on Rules of Practice and Procedure, approved changes to thirteen official forms. Many of the revisions or additions were necessary as a result of the federal rules of bankruptcy procedure changes effective December 1, 2014. The following list includes the revised forms also effective December 1, 2014, with a brief comment identifying the change:

1. **B3A Application for Individuals to Pay the Filing Fee in Installments (12/14).** This includes the application and order approving installment payments. The revision eliminated the filing fees for the various chapters listed on page one. This will prevent further revisions to the official form as filing fees change. You will need to consult a separate source for current filing fees in order to complete question 2 of the application. See, <http://www.nynb.uscourts.gov/?q=filing-fees>
2. **B3B Application to Have the Chapter 7 Filing Fee Waived (12/14).** This includes the application and order determining chapter 7 filing fee waiver. The amount of the filing fee is no longer on the blank order. The clerk's office will prepare the order with the correct fee amount.
3. **B06 Summary (12/14).** Line number references to the amended means-test forms (Official Forms 22A-1, 22B, and 22C-1) for Current Monthly Income added on page 2.
4. **B17A Notice of Appeal and Statement of Election (12/14).** This new form combines the Notice of Appeal and the Statement of Election. The revision is in accord with Fed. R. Bankr. Pro. 8005(a) and 28 U.S.C. § 158(c)(1)(A) which requires the appellant to make an election to have the appeal heard by the

district court rather than the bankruptcy appellate panel at the time of filing the appeal. Part 4 constitutes the election and is not applicable and should be left blank in the bankruptcy courts within the Second Circuit (including NYNB) as there is no authorized bankruptcy appellate panel.

5. **B17B Optional Appellee Statement of Election to Proceed in District Court (12/14).** This new form allows the appellee the option to elect within 30 days of service of the Notice of Appeal to have the appeal heard by the district court rather than the bankruptcy appellate panel. This form has no applicability in the bankruptcy courts within the Second Circuit as there is no authorized bankruptcy appellate panel.
6. **B17C Certificate of Compliance with Rule 8015(a)(7)(B) and 8016(d)(2) (12/14).** This new form must be appended to your brief to certify its length when it is calculated by maximum number of words or lines of text under new Fed. Rule of Bankr. Pro. 8015(a)(7)(C). It is not necessary if the brief meets the page limitations under Fed. Rule of Bankr. Pro. 8015(a)(7)(A) or 8016(d)(1).
7. **B22A-1 Chapter 7 Statement of Your Current Monthly Income (12/14).** Revised chapter 7 means test as part of the Bankruptcy Rules Advisory Committee's ongoing Forms Modernization Project. The old B-22A has been split into two forms. This form must be completed by **all** chapter 7 debtors. It is designed to calculate the debtor's current monthly income and compare it to the median income for similarly sized households in the debtor's state.
8. **B22A-1 Supp Statement of Exemption from Presumption of Abuse Under §707(b)(2) (12/14).** The exemptions from the means test (*i.e.*, debtors who do not have primarily consumer debts and certain members of the armed forces) have been moved to this form. They used to be included at the top of the Official Form 22-A. This form will only be filed where applicable.
9. **B22A-2 Chapter 7 Means Test Calculation.** Only debtors with current monthly income above the applicable state median must complete this form.
10. **B22B Chapter 11 Statement of Your Current Monthly Income (12/14).** Chapter 11 means test form has been revised as part of the Bankruptcy Rules Advisory Committee's ongoing Forms Modernization Project.

11. **B22C-1 Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period (12/14).** All chapter 13 debtors must file this form.
12. **B22C-2 Chapter 13 Calculation of Your Disposable Income (12/14).** Only debtors with current monthly income above the applicable state median must complete this form. It uses the allowed expenses deductions under 11 U.S.C. § 1325(b)(3) to calculate disposable income. Part 3 of this form provides for reporting changes to income or expenses in accord with the Supreme Court's decision in Hamilton v. Lanning, 560 U.S. 505 (2010).

If you are using the revised forms for the first time, you are encouraged to review the forms' instructions and the Committee Notes on the United States Court's website at:

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx>.

After December 1, 2014, the final revisions with instructions and comments will be found at:

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

B. Federal Rules of Bankruptcy Procedure (Rule or Bankruptcy Rule).

On April 25, 2014 the Chief Justice of the United States Supreme Court transmitted to the Congress the amendments to the Federal Rules of Bankruptcy Procedure. They are to be effective December 1, 2014 and "shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending." The following list includes the amended rules with a brief comment identifying the change:

1. **Rule 1014. Dismissal and Change of Venue. (b) Procedure When Petitions Involving the Same Debtor or Related Debtors Are Filed in Different Courts.** Makes clear that the court where the first filed petition is pending determines where the pending related cases should proceed if a party seeks such a determination. Rule now directs parties upon whom service of such a motion must be made. Makes clear an order of the court where the first filed petition is pending is necessary to stay proceedings in the related cases.

2. **Rule 7004. Process; Service of Summons, Complaint. (e) Summons: Time Limit For Service Within the United States.** Delivery of the summons and complaint shall be made within 7 days of the issuance of the summons. This is a change from 14 days. If service is by mail, the summons and complaint shall be deposited in the mail within 7 days of issuance of the summons. Another summons will be issued for service if the summons is not timely delivered or mailed. The Committee Note indicates this amendment is intended to leave a reasonable amount of time for the defendant to answer. The answer period is 30 days and runs from the issuance of the summons. Thus, delivery of the summons within 7 days as opposed to 14 days enlarges the window for the defendant to answer.
3. **Rule 7008. General Rules of Pleading. (b) Attorney's Fees.** Subsection (b) which required a request for attorney's fees to be pleaded as a claim in an allowed pleading is eliminated. The authority and method of procedure is moved to Rule 7054(b)(2).
4. **Rule 7054. Judgment; Costs. (b)(2) Attorney's Fees.** Makes F.R. Civ. P. 54(d)(2)(A)-(C) applicable to adversary proceedings. This prescribes the procedure for seeking an award of attorney's fees and related nontaxable expenses in an adversary proceeding. The court is allowed to establish a local rule to resolve fee-related disputes without extensive evidentiary hearings.
5. **Rule 9023. New trials; Amendment of Judgments.** Adds a cross-reference to amended Rule 8008. It outlines the bankruptcy court's options if a party timely seeks relief which the court lacks the authority to grant because an appeal is pending.
6. **Rule 9024. New trials; Amendment of Judgments.** Adds a cross-reference to amended Rule 8008.
7. **Rules Governing Appeals - Rules 8001-8028.** Part 8 of the Federal Rules of Bankruptcy Procedure governs appeals to district courts and bankruptcy appellate panels. The amendments to Part 8 are extensive and several rules are re-numbered. The purpose of the amendments are to (1) bring the bankruptcy appellate rules into closer alignment with the Federal Rules of Appellate Procedures; (2) incorporate a presumption favoring electronic transmission, filing and service of court documents; and (3) adopt a clearer and simpler style. The

reader is urged to consult the entirety of the rules and Committee Notes for a full understanding of the amendments and additions.

To review the complete transmittal from the United State Supreme Court to the Congress:

<http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/congressional-package-for-congress.pdf>.