



# Proposed Federal Bankruptcy Rule, Fee and Form Changes

Effective December 1, 2016

United States Bankruptcy Court, District of Alaska

# Proposed Amendments to the Federal Rules

On April 28, 2016, the Supreme Court adopted changes to the Federal Rules of Appellate, Civil, Criminal, and Bankruptcy Procedures which are scheduled to take effect on December 1, 2016.

The following is a summary of the proposed changes to the Rules, Fees and Forms.

*Disclaimer: This packet is not intended to be all encompassing and should not be considered legal advice. All parties acting before the court should perform any and all research prior to filing.*



## Proposed Federal Rule Changes

The following Rules are scheduled to change:

- ▶ 1010
- ▶ 1011
- ▶ 1012
- ▶ 2002
- ▶ 3002.1
- ▶ 7008
- ▶ 7012
- ▶ 7016
- ▶ 9006
- ▶ 9027
- ▶ 9033

Committee Notes on each proposed change are further detailed on the following pages.

## Rule 1010. Service of Involuntary Petition and Summons

Subdivision (a) of this rule is amended to remove provisions regarding the issuance of a summons for service in certain chapter 15 proceedings. The requirements for notice and service in chapter 15 proceedings are found in Rule 2002(q).

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE**

**Rule 1010. Service of Involuntary Petition and  
Summons**

(a) SERVICE OF INVOLUNTARY PETITION  
AND SUMMONS. On the filing of an involuntary  
petition, the clerk shall forthwith issue a summons for  
service. When an involuntary petition is filed, service shall  
be made on the debtor. The summons shall be served with  
a copy of the petition in the manner provided for service of  
a summons and complaint by Rule 7004(a) or (b). If  
service cannot be so made, the court may order that the  
summons and petition be served by mailing copies to the  
party's last known address, and by at least one publication  
in a manner and form directed by the court. The summons  
and petition may be served on the party anywhere.  
Rule 7004(e) and Rule 4(*l*) F.R.Civ.P. apply when service  
is made or attempted under this rule.

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## Rule 1011. Responsive Pleading or Motion in Involuntary

This rule is amended to remove provisions regarding chapter 15 proceedings. The requirements for responses to a petition for recognition of a foreign proceeding are found in Rule 1012.



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**Rule 1011. Responsive Pleading or Motion in Involuntary Cases**

(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition may contest the petition. In the case of a petition against a partnership under Rule 1004, a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

\* \* \* \* \*

(f) CORPORATE OWNERSHIP STATEMENT. If the entity responding to the involuntary petition is a corporation, the entity shall file with its first appearance, pleading, motion, response, or other request addressed to the court a corporate ownership statement containing the information described in Rule 7007.1.

## Rule 1012. Responsive Pleading in Cross-Border Cases

This rule is added to govern responses to petitions for recognition in cross-border cases. It incorporates provisions formerly found in Rule 1011. Subdivision (a) provides that the debtor or a party in interest may contest the petition. Subdivision (b) provides for presentation of responses no later than 7 days before the hearing on the petition, unless the court directs otherwise. Subdivision (c) governs the filing of corporate ownership statements by entities responding to the petition.



**Rule 1012. Responsive Pleading in Cross-Border Cases**

(a) WHO MAY CONTEST PETITION. The debtor or any party in interest may contest a petition for recognition of a foreign proceeding.

(b) OBJECTIONS AND RESPONSES; WHEN PRESENTED. Objections and other responses to the petition shall be presented no later than seven days before the date set for the hearing on the petition, unless the court prescribes some other time or manner for responses.

(c) CORPORATE OWNERSHIP STATEMENT. If the entity responding to the petition is a corporation, then the entity shall file a corporate ownership statement containing the information described in Rule 7007.1 with its first appearance, pleading, motion, response, or other request addressed to the court.

## Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

Subdivision (q) is amended to clarify the procedures for giving notice in cross-border proceedings. The amended rule provides, in keeping with Code § 1517(c), for the court to schedule a hearing to be held promptly on the petition for recognition of a foreign proceeding. The amended rule contemplates that a hearing on a request for provisional relief may sometimes overlap substantially with the merits of the petition for recognition. In that case, the court may choose to consolidate the hearing on the request for provisional relief with the hearing on the petition for recognition, see Rules 1018 and 7065, and accordingly shorten the usual 21-day notice period.

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**Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee**

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(q) NOTICE OF PETITION FOR RECOGNITION OF FOREIGN PROCEEDING AND OF COURT'S INTENTION TO COMMUNICATE WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES.

(1) *Notice of Petition for Recognition.* After the filing of a petition for recognition of a foreign proceeding, the court shall promptly schedule and hold a hearing on the petition. The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under §1519 of the Code, all parties to

litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding and shall include the petition and any other document the court may require. If the court consolidates the hearing on the petition with the hearing on a request for provisional relief, the court may set a shorter notice period, with notice to the entities listed in this subdivision.

\* \* \* \* \*

## Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

Subdivision (a) is amended to clarify the applicability of the rule. Its provisions apply whenever a chapter 13 plan provides that contractual payments on the debtor's home mortgage will be maintained, whether they will be paid by the trustee or directly by the debtor. The reference to § 1322(b)(5) of the Code is deleted to make clear that the rule applies even if there is no prepetition arrearage to be cured. So long as a creditor has a claim that is secured by a security interest in the debtor's principal residence and the plan provides that contractual payments on the claim will be maintained, the rule applies.

Subdivision (a) is further amended to provide that, unless the court orders otherwise, the notice obligations imposed by this rule cease on the effective date of an order granting relief from the automatic stay with regard to the debtor's principal residence. Debtors and trustees typically do not make payments on mortgages after the stay relief is granted, so there is generally no need for the holder of the claim to continue providing the notices required by this rule. Sometimes, however, there may be reasons for the debtor to continue receiving mortgage information after stay relief. For example, the debtor may intend to seek a mortgage modification or to cure the default. When the court determines that the debtor has a need for the information required by this rule, the court is authorized to order that the notice obligations remain in effect or be reinstated after the relief from the stay is granted.

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**Rule 3002.1. Notice Relating to Claims Secured by  
Security Interest in the Debtor's  
Principal Residence**

(a) IN GENERAL. This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.

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## Rule 7008. General Rules of Pleading

The rule is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to require in all proceedings that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. Rule 7012(b) has been amended to require a similar statement in a responsive pleading. The bankruptcy judge will then determine the appropriate course of proceedings under Rule 7016.

**Rule 7008. General Rules of Pleading**

Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.



## Rule 7012. Defenses and Objections - When and How Presented - By Pleading or Motion - Motion for Judgment on the Pleadings

Subdivision (b) is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to require in all proceedings that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. The amended rule also removes the provision requiring express consent before the entry of final orders and judgments in non-core proceedings. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157 (b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. This amendment complements the requirements of amended Rule 7008(a). The bankruptcy judge's subsequent determination of the appropriate course of the proceedings, including whether to enter final orders and judgments or to issue proposed findings of fact and conclusions of law, is a pretrial matter now provided for in amended Rule 7016.

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**Rule 7012. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings**

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(b) APPLICABILITY OF RULE 12(b)-(i)

F.R.CIV.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.

## Rule 7016. Pre-trial Procedures

This rule is amended to create a new subdivision (b) that provides for the bankruptcy court to enter final orders and judgment, issue proposed findings and conclusions, or take some other action in a proceeding. The rule leaves the decision as to the appropriate course of proceedings to the bankruptcy court. The court's decision will be informed by the parties' statements, required under Rules 7008(a), 7012(b), and 9027(a) and (e), regarding consent to the entry of final orders and judgment. If the bankruptcy court chooses to issue proposed findings of fact and conclusions of law, Rule 9033 applies.

**Rule 7016. Pretrial Procedures**

(a) PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT. Rule 16 F.R.Civ.P. applies in adversary proceedings.

(b) DETERMINING PROCEDURE. The bankruptcy court shall decide, on its own motion or a party's timely motion, whether:

- (1) to hear and determine the proceeding;
- (2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or
- (3) to take some other action.

## Rule 9006. Computing and Extending Time: Time for Motion Papers

Subdivision (f) is amended to remove service by electronic means under Civil Rule 5(b)(2)(E) from the modes of service that allow three added days to act after being served.

Rule 9006(f) and Civil Rule 6(d) contain similar provisions providing additional time for actions after being served by mail or by certain modes of service that are identified by reference to Civil Rule 5(b)(2).

Rule 9006(f)—like Civil Rule 6(d)—is amended to remove the reference to service by electronic means under Rule 5(b)(2)(E). The amendment also adds clarifying parentheticals identifying the forms of service under Rule 5(b)(2) for which three days will still be added.

Civil Rule 5(b)—made applicable in bankruptcy proceedings by Rules 7005 and 9014(b)—was amended in 2001 to allow service by electronic means with the consent of the person served. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow three added days to act after being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. Those concerns have been substantially alleviated by advances in technology and widespread skill in using electronic transmission.

Continued on next page...

## Rule 9006 Computing and Extending Time: Time for Motion Papers (Continued)

A parallel reason for allowing the three added days was that electronic service was authorized only with the consent of the person to be served. Concerns about the reliability of electronic transmission might have led to refusals of consent; the three added days were calculated to alleviate these concerns.

Diminution of the concerns that prompted the decision to allow the three added days for electronic transmission is not the only reason for discarding this indulgence. Many rules have been changed to ease the task of computing time by adopting 7-, 14-, 21-, and 28-day periods that allow “day-of-the-week” counting. Adding three days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

Electronic service after business hours, or just before or during a weekend or holiday, may result in a practical reduction in the time available to respond. Extensions of time may be warranted to prevent prejudice.

Eliminating Rule 5(b) subparagraph (2)(E) from the modes of service that allow three added days means that the three added days cannot be retained by consenting to service by electronic means. Consent to electronic service in registering for electronic case filing, for example, does not count as consent to service “by any other means” of delivery under subparagraph (F).

Subdivision (f) is also amended to conform to a corresponding amendment of Civil Rule 6(d). The amendment clarifies that only the party that is served by mail or under the specified provisions of Civil Rule 5—and not the party making service—is permitted to add three days to any prescribed period for taking action after service is made.

**Rule 9006. Computing and Extending Time; Time for Motion Papers**

\* \* \* \* \*

(f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR UNDER RULE 5(b)(2)(D) OR (F) F.R.CIV.P. When there is a right or requirement to act or undertake some proceedings within a prescribed period after being served and that service is by mail or under Rule 5(b)(2)(D) (leaving with the clerk) or (F) (other means consented to) F.R.Civ.P., three days are added after the prescribed period would otherwise expire under Rule 9006(a).

\* \* \* \* \*

## Rule 9027. Removal

Subdivisions (a)(1) and (e)(3) are amended to delete the requirement for a statement that the proceeding is core or non-core and to require in all removed actions a statement that the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings, 28 U.S.C § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for a statement regarding consent at the time of removal, whether or not a proceeding is termed non-core.

The party filing the notice of removal must include a statement regarding consent in the notice, and the other parties who have filed pleadings must respond in a separate statement filed within 14 days after removal. If a party to the removed claim or cause of action has not filed a pleading prior to removal, however, there is no need to file a separate statement under subdivision (e)(3), because a statement regarding consent must be included in a responsive pleading filed pursuant to Rule 7012(b). Rule 7016 governs the bankruptcy court's decision whether or hear and determine the proceeding, issue proposed findings of fact and conclusions of law, or take some other action in the proceeding.



**Rule 9027. Removal**

(a) NOTICE OF REMOVAL.

(1) *Where Filed; Form and Content.* A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action, the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings.

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(e) PROCEDURE AFTER REMOVAL.

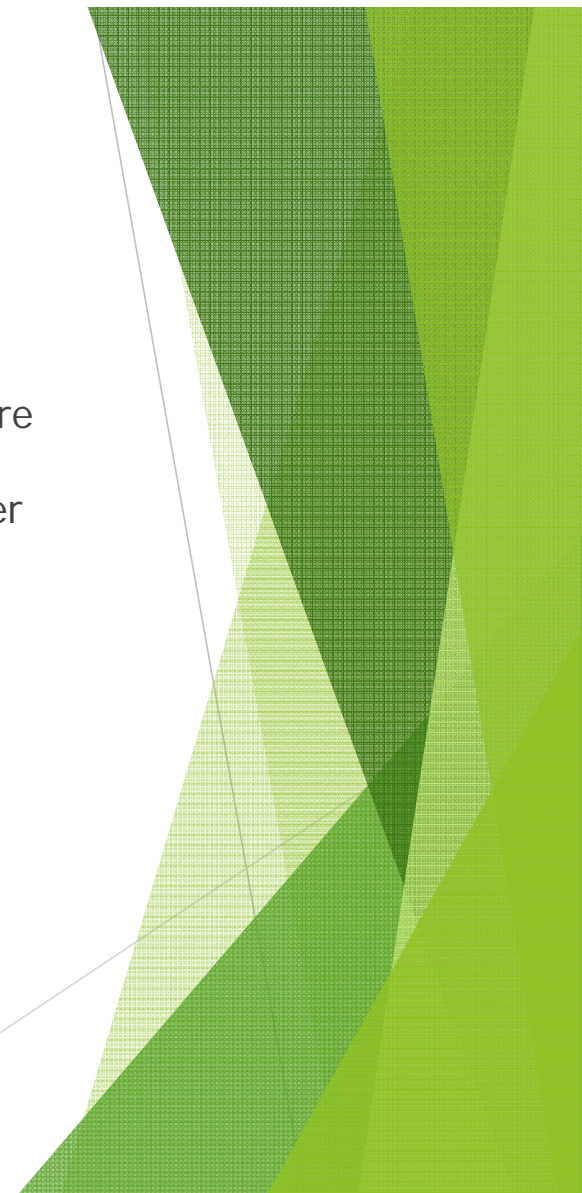
\* \* \* \* \*

(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.

\* \* \* \* \*

## Rule 9033. Proposed Findings of Fact and Conclusions of Law

Subdivision (a) is amended to delete language limiting this provision to non-core proceedings. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. If the bankruptcy court decides, pursuant to Rule 7016, that it is appropriate to issue proposed findings of fact and conclusions of law in a proceeding, this rule governs the subsequent procedures.



**Rule 9033. Proposed Findings of Fact and Conclusions of Law**

(a) SERVICE. In a proceeding in which the bankruptcy court has issued proposed findings of fact and conclusions of law, the clerk shall serve forthwith copies on all parties by mail and note the date of mailing on the docket.

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# Fees

Several fees are being slightly increased on December 1, 2016



# Fee changes

Bankruptcy Court Miscellaneous Fee Schedule (28 U.S.C. § 1930) Item No.	Description	Current Fee	Approved New Fee
2	For exemplification of any document	\$21	\$22
3	For reproduction of an audio recording of a court proceeding	\$30	\$31
4	For filing an amendment to the debtor's schedule of creditors, lists of creditors, or mailing list...	\$30	\$31
5	For conducting a search of the bankruptcy court records...	\$30	\$31
7	For filing any document that is not related to a pending case or proceeding . . .	\$46	\$47
19	For filing the following motions. . . <ul style="list-style-type: none"> <li>•To terminate, annul, modify or condition the automatic stay;</li> <li>•To compel the abandonment of property of the estate. . .</li> <li>•To withdraw the reference of a case or proceeding. . .</li> <li>•To sell property of the estate free and clear of liens under [11 U.S.C. §363(f)].</li> </ul>	\$176	\$181

# Forms

Only three forms are being slightly modified for use after December 1, 2016.



# Form Changes

Form 420A Notice of [Motion To] [Objection To] (AK LBF11)

Form 420B Notice of Objection to Claim (AK LBF13)

Note - AK LBF 11 & 13 have not changed

The form numbers are updated to comport with the form numbering style developed as part of the Forms Modernization project. The forms are also amended to change the phrase "mail" to "send" to reflect the fact that there are various methods of providing documents to other parties.



# Form Changes

## Form 410S2 Notice of Postpetition Mortgage Fees, Expenses, and Charges

Form 410S2, *Notice of Postpetition Mortgage Fees, Expenses, and Charges*, is amended in the instructions in Part 1 to clarify how to report previously approved fees, expenses, or charges. The following language is added: "If the court has previously approved an amount, indicate that approval in parentheses after the date the amount was incurred." This amended language replaces the prior instruction not to report any amounts previously ruled on by the bankruptcy court.

**Fill in this information to identify the case:**

Debtor 1 \_\_\_\_\_  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing)  
United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)  
Case number \_\_\_\_\_

**Official Form 410S2**

**Notice of Postpetition Mortgage Fees, Expenses, and Charges** 12/16

If the debtor's plan provides for payment of postpetition contractual installments on your claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any fees, expenses, and charges incurred after the bankruptcy filing that you assert are recoverable against the debtor or against the debtor's principal residence.

File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: \_\_\_\_\_ Court claim no. (if known): \_\_\_\_\_

Last 4 digits of any number you use to identify the debtor's account: \_\_\_\_\_

Does this notice supplement a prior notice of postpetition fees, expenses, and charges?

- No
- Yes. Date of the last notice: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Part 1: Itemize Postpetition Fees, Expenses, and Charges**

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case. If the court has previously approved an amount, indicate that approval in parentheses after the date the amount was incurred.

Description	Dates incurred	Amount
1. Late charges	_____	(1) \$ _____
2. Non-sufficient funds (NSF) fees	_____	(2) \$ _____
3. Attorney fees	_____	(3) \$ _____
4. Filing fees and court costs	_____	(4) \$ _____
5. Bankruptcy/Proof of claim fees	_____	(5) \$ _____
6. Appraisal/Broker's price opinion fees	_____	(6) \$ _____
7. Property inspection fees	_____	(7) \$ _____
8. Tax advances (non-escrow)	_____	(8) \$ _____
9. Insurance advances (non-escrow)	_____	(9) \$ _____
10. Property preservation expenses. Specify: _____	_____	(10) \$ _____
11. Other. Specify: _____	_____	(11) \$ _____
12. Other. Specify: _____	_____	(12) \$ _____
13. Other. Specify: _____	_____	(13) \$ _____
14. Other. Specify: _____	_____	(14) \$ _____

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 1322(b)(5) and Bankruptcy Rule 3002.1.

Debtor 1

\_\_\_\_\_  
First Name Middle Name Last Name

Case number (if known) \_\_\_\_\_

**Part 2: Sign Here**

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number.

Check the appropriate box.

- I am the creditor.
- I am the creditor's authorized agent.

**I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.**

**X** \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_\_  
Signature

Print: \_\_\_\_\_ Title \_\_\_\_\_  
First Name Middle Name Last Name

Company \_\_\_\_\_

Address \_\_\_\_\_  
Number Street  
\_\_\_\_\_  
City State ZIP Code

Contact phone (\_\_\_\_) \_\_\_\_-\_\_\_\_ Email \_\_\_\_\_

# That's it for now!

For more information, and a complete copy of the new proposed Rules and Forms, please visit the US Courts website at: (Rules appear in the Amendments Adopted by the Supreme court section near the bottom of the page, and Forms are directly above that section.)

<http://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments>

