

# PRELIMINARY DRAFT OF

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## Proposed Amendments to the Federal Rules of Bankruptcy Procedure

Request for Comment

Comments are sought on Amendments to:

Bankruptcy Rule 3015 and new Rule 3015.1

All Written Comments are Due by  
October 3, 2016



THE UNITED STATES COURTS

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

JULY 2016



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

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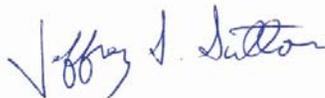
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MEMORANDUM

**TO: THE BENCH, BAR, AND PUBLIC**

**FROM: Honorable Jeffrey S. Sutton, Chair**  
**Committee on Rules of Practice and Procedure**



**DATE: July 1, 2016**

**RE: Request for Comments by October 3, 2016 on Proposed Amendments to  
Bankruptcy Rule 3015 and new Rule 3015.1**

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The Judicial Conference Advisory Committee on Bankruptcy Rules has proposed amendments to Bankruptcy Rule 3015 and adoption of new Rule 3015.1 to modify its prior proposal for an official form for the plan of reorganization under chapter 13 of the Bankruptcy Code. It has requested that the two rules be circulated to the bench, bar, and public for comment. The proposed amendments, advisory committee report, and other information are attached and posted on the Judiciary's website at:

<http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>

**Opportunity for Public Comment and Notice of Shortened Comment Period**

The proposed amendment to Rule 3015, along with new Rule 3015.1, would modify the Advisory Committee's proposal (published for comment in 2014 and again in 2015) for a mandatory nation-wide official chapter 13 plan form. The proposed amendment to Rule 3015 would require use of the national official plan form unless a district instead adopts a local plan form that meets the requirements of proposed new Rule 3015.1. Given the prior rounds of public

comments on the proposed plan form package (Official Form 113 and related amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001 and 9009), and given the limited nature of the proposed modification, the Committee on Rules of Practice and Procedure has approved a public comment period of three months for Rules 3015 and 3015.1.

All comments on these proposed amendments will be carefully considered by the Advisory Committee on Bankruptcy Rules, which is composed of experienced trial and appellate lawyers, judges, and scholars. Please provide any comments on the proposed amendments, whether favorable, adverse, or otherwise, as soon as possible, but **no later than Monday, October 3, 2016**. All comments are made part of the official record and will be available to the public.

Comments concerning the proposed amendments must be submitted electronically by following the instructions at:

<http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>

Members of the public who wish to present testimony may appear at the public hearing on these proposals. The Advisory Committee will hold a hearing on the proposed amendments on the following date:

September 27, 2016, in Pasadena, CA

If you wish to testify, you must notify the Committee in writing **at least 30 days before the scheduled hearing**. Requests to testify should be mailed to the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite 7-240, Washington, D.C. 20544.

After the public comment period, the Advisory Committee will decide whether to recommend final approval of the amendments to Rules 3015 and 3015.1. At this time, the Committee on Rules of Practice and Procedure has not approved the proposed amendments except to authorize their publication for comment. The proposed amendments could become effective on December 1, 2017, if they are approved, with or without revision, by the Advisory Committee, the Committee on Rules of Practice and Procedure, the Judicial Conference, and the Supreme Court, and if Congress does not act to defer, modify, or reject them.

If you have questions about the rulemaking process or pending rules amendments, please contact the Rules Committee Support Office at 202-502-1820 or visit:

<http://www.uscourts.gov/rules-policies>

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**MEMORANDUM**

**TO:** Hon. Jeffrey S. Sutton, Chair  
Committee on Rules of Practice and Procedure

**FROM:** Hon. Sandra Segal Ikuta  
Advisory Committee on Bankruptcy Rules

**RE:** Report of the Advisory Committee on Bankruptcy Rules

**DATE:** May 10, 2016

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**I. Introduction**

The Advisory Committee on Bankruptcy Rules met on March 31, 2016, in Denver, Colorado.

\* \* \* \* \*

**II. Action Items**

\* \* \* \* \*

**B. Items for Publication**

*(BI) For publication in July 2016.*

**Action Item 4. Rule 3015 (Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case) and new Rule 3015.1 (Requirements for a Local Form for Plans Filed in a Chapter 13 Case). The Committee recommends that the following rule amendments and new rule be published for**

**public comment in July 2016 and that the comment period extend for three months.** The rules in this group appear in Appendix B1.

The amended rule would require the use of an official form for chapter 13 plans unless a district requires the use of a single local form for that purpose that meets the requirements set out in the new rule. As the Committee has previously reported, it decided to consider this opt-out possibility in response to significant opposition that was voiced to the possible adoption of a mandatory national official form for chapter 13 plans. Informal comments on the opt-out proposal have been generally favorable.

The Committee began considering creating an official form for chapter 13 plans in 2011, prompted by the submission of two suggestions that a national plan form be adopted. *See* Suggestions 10-BK-G and 10-BK-M. A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in August 2013. Because the Committee made significant changes to the form in response to comments it received, the revised form and rules were published again in August 2014.

At the fall 2015 meeting, the Committee gave approval to proposed Official Form 113 (the national plan form) and related amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009, but it voted to defer submitting those items to the Standing Committee. This deferral was to allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication. It directed the Forms Subcommittee to continue to obtain feedback on the opt-out proposal from a broad range of bankruptcy constituencies and to make a recommendation at the spring 2016 meeting regarding the need for additional publication.

The Subcommittee reached out to all relevant groups and invited them to provide feedback on the opt-out proposal, as set out in proposed Rules 3015 and 3015.1, as well as on whether they perceived a need for further publication. The following groups provided comments to the Subcommittee in response: National Bankruptcy Conference (“NBC”), National Conference of Bankruptcy Judges (“NCBJ”), National Association of Consumer Bankruptcy Attorneys (“NACBA”), the American Bankruptcy Institute’s Consumer Committee, a large number of chapter 13 trustees whose comments were collected by the National Association of Chapter 13 Trustees, and an informal mortgage servicer group. While the bulk of the comments received were directed at the plan form itself, rather than at the opt-out proposal, three groups (NBC, NCBJ, and the mortgage servicers) and seven individual trustees did express support for allowing districts to opt out of a national plan form. In addition, Bankruptcy Judge Marvin Isgur (S.D. Tex.) circulated the opt-out proposal to the 144 bankruptcy judges who had submitted a letter in 2014 opposing a national plan form, and he reported that there was general acceptance of Rules 3015 and 3015.1 among the group.

The response of NACBA to the subcommittee's outreach was relatively brief. The president of the organization said that he could not speak for the thousands of NACBA members, and he urged the Committee to publish the proposals that were being considered. He asserted that "adoption of the 'compromise' proposal without providing a new comment period would not comply with the law and [would] subject such to litigation and added controversy." NCBJ also advised that the opt-out proposal be published for public comment.

At the spring meeting, the Committee unanimously approved the Forms Subcommittee's recommendation that the amendments to Rule 3015 and proposed new Rule 3015.1 be published for public comment. The opt-out concept was not included in the 2013 and 2014 publications, and, although it might be viewed as a lesser-included version of the proposal for a mandatory national form, it does represent a distinct change from the published proposals. Some members of the Committee stated that they favor republication because of concern about the constituencies that do not feel that they have had a fair opportunity to express their comments on the opt-out proposal. A general desire was expressed to eliminate any possible procedural objections to the Committee's eventual recommendation.

The Committee also unanimously agreed that the Committee should seek to publish Rules 3015 and 3015.1 on a truncated schedule. According to § 440.20.40(d) of the Guide to Judiciary Policy, "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." Because of the two prior publications and the narrow focus of the revised rules, the Committee believes that the usual 6-month comment period should be shortened so that an entire year can be eliminated from the period leading up to the effective date of the Committee's proposed rules and forms.

If the regular publication schedule were followed, Rules 3015 and 3015.1 would be published in August 2016, and comments would be received by sometime in February 2017. If approved, those rules and the rest of the chapter 13 plan form package would then be on track for an effective date of December 1, 2018.

However, if Rules 3015 and 3015.1 could be published on a truncated schedule, they could be published this summer with a 3-month deadline for submitting comments. A single hearing could be scheduled. The Committee could then vote on approval at its fall meeting in November and seek the Standing Committee's approval in January 2017. Approval of the Judicial Conference could be sought in March 2017. With advance notice to and permission of the Supreme Court, it could be asked to promulgate the rules by May 1, 2017, leading to an effective date for the form and rules of December 1, 2017.

The Committee suggests that, if the shortened schedule is approved, Rules 3015 and 3015.1 be published by themselves in July 2016. A separate publication would avoid creating confusion by having two different comment deadlines for the materials published in August.

The rules and official form approved by the Committee last fall would continue to be held in abeyance until the Committee takes final action on Rules 3015 and 3015.1. This would allow the entire chapter 13 plan package to be sent forward as a package.

\* \* \* \* \*

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

1 **Rule 3015. Filing, Objection to Confirmation, Effect of**  
2 **Confirmation, and Modification of a Plan**  
3 **in a Chapter 12 ~~Family Farmer's Debt~~**  
4 **~~Adjustment~~ or a Chapter 13 ~~Individual's~~**  
5 **~~Debt Adjustment Case~~**

6 (a) FILING A CHAPTER 12 PLAN. The debtor  
7 may file a chapter 12 plan with the petition. If a plan is not  
8 filed with the petition, it shall be filed within the time  
9 prescribed by § 1221 of the Code.

10 (b) FILING A CHAPTER 13 PLAN. The debtor  
11 may file a chapter 13 plan with the petition. If a plan is not  
12 filed with the petition, it shall be filed within 14 days  
13 thereafter, and such time may not be further extended  
14 except for cause shown and on notice as the court may  
15 direct. If a case is converted to chapter 13, a plan shall be  
16 filed within 14 days thereafter, and such time may not be

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\* New material is underlined in red; matter to be omitted is lined through.

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17 further extended except for cause shown and on notice as  
18 the court may direct.

19 (c) ~~DATING.~~ ~~Every proposed plan and any~~  
20 ~~modification thereof shall be dated.~~ FORM OF  
21 CHAPTER 13 PLAN. If there is an Official Form for a  
22 plan filed in a chapter 13 case, that form must be used  
23 unless a Local Form has been adopted in compliance with  
24 Rule 3015.1. With either the Official Form or a Local  
25 Form, a nonstandard provision is effective only if it is  
26 included in a section of the form designated for  
27 nonstandard provisions and is also identified in accordance  
28 with any other requirements of the form. As used in this  
29 rule and the Official Form or a Local Form, “nonstandard  
30 provision” means a provision not otherwise included in the  
31 Official or Local Form or deviating from it.

32 (d) NOTICE AND COPIES. If the plan ~~The plan or~~  
33 ~~a summary of the plan shall be~~ is not included with the ~~each~~  
34 notice of the hearing on confirmation  
35 mailed under ~~pursuant to~~ Rule 2002, the debtor shall serve  
36 the plan on the trustee and all creditors when it is filed with  
37 the court. ~~If required by the court, the debtor shall furnish a~~  
38 ~~sufficient number of copies to enable the clerk to include a~~  
39 ~~copy of the plan with the notice of the hearing.~~

40 (e) TRANSMISSION TO UNITED STATES  
41 TRUSTEE. The clerk shall forthwith transmit to the  
42 United States trustee a copy of the plan and any  
43 modification thereof filed under ~~pursuant to~~ subdivision (a)  
44 or (b) of this rule.

45 (f) OBJECTION TO CONFIRMATION;  
46 DETERMINATION OF GOOD FAITH IN THE  
47 ABSENCE OF AN OBJECTION. An objection to

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48 confirmation of a plan shall be filed and served on the  
49 debtor, the trustee, and any other entity designated by the  
50 court, and shall be transmitted to the United States  
51 trustee, ~~before confirmation of the plan~~ at least seven days  
52 before the date set for the hearing on confirmation, unless  
53 the court orders otherwise. An objection to confirmation is  
54 governed by Rule 9014. If no objection is timely filed, the  
55 court may determine that the plan has been proposed in  
56 good faith and not by any means forbidden by law without  
57 receiving evidence on such issues.

58 (g) EFFECT OF CONFIRMATION. Upon the  
59 confirmation of a chapter 12 or chapter 13 plan:

60 (1) any determination in the plan made under  
61 Rule 3012 about the amount of a secured claim is  
62 binding on the holder of the claim, even if the holder  
63 files a contrary proof of claim or the debtor schedules

64 that claim, and regardless of whether an objection to  
65 the claim has been filed; and  
66 (2) any request in the plan to terminate the stay  
67 imposed by § 362(a), § 1201(a), or § 1301(a) is  
68 granted.

69 ~~(g)~~(h) MODIFICATION OF PLAN AFTER  
70 CONFIRMATION. A request to modify a plan pursuant  
71 ~~to~~ under § 1229 or § 1329 of the Code shall identify the  
72 proponent and shall be filed together with the proposed  
73 modification. The clerk, or some other person as the court  
74 may direct, shall give the debtor, the trustee, and all  
75 creditors not less than 21 days' notice by mail of the time  
76 fixed for filing objections and, if an objection is filed, the  
77 hearing to consider the proposed modification, unless the  
78 court orders otherwise with respect to creditors who are not  
79 affected by the proposed modification. A copy of the

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80 notice shall be transmitted to the United States trustee. A  
81 copy of the proposed modification, or a summary thereof,  
82 shall be included with the notice. ~~If required by the court,~~  
83 ~~the proponent shall furnish a sufficient number of copies of~~  
84 ~~the proposed modification, or a summary thereof, to enable~~  
85 ~~the clerk to include a copy with each notice.~~ Any objection  
86 to the proposed modification shall be filed and served on  
87 the debtor, the trustee, and any other entity designated by  
88 the court, and shall be transmitted to the United States  
89 trustee. An objection to a proposed modification is  
90 governed by Rule 9014.

**Committee Note**

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically

designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Subdivision (g)(2) provides for termination of the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve

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a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

1 **Rule 3015.1. Requirements for a Local Form for Plans**  
2 **Filed in a Chapter 13 Case**

3 Notwithstanding Rule 9029(a)(1), a district may  
4 require that a Local Form for a plan filed in a chapter 13  
5 case be used instead of an Official Form adopted for that  
6 purpose if the following conditions are satisfied:

7 (a) a single Local Form is adopted for the district  
8 after public notice and an opportunity for public comment;

9 (b) each paragraph is numbered and labeled in  
10 boldface type with a heading stating the general subject  
11 matter of the paragraph;

12 (c) the Local Form includes an initial paragraph for  
13 the debtor to indicate that the plan does or does not:

14 (1) contain any nonstandard provision;

15 (2) limit the amount of a secured claim based  
16 on a valuation of the collateral for the claim; or

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- 17 (3) avoid a security interest or lien;  
18 (d) the Local Form contains separate paragraphs  
19 for:  
20 (1) curing any default and maintaining  
21 payments on a claim secured by the debtor's principal  
22 residence;  
23 (2) paying a domestic-support obligation;  
24 (3) paying a claim described in the final  
25 paragraph of § 1325(a) of the Bankruptcy Code; and  
26 (4) surrendering property that secures a claim  
27 with a request that the stay be terminated as to the  
28 surrendered collateral; and  
29 (e) the Local Form contains a final paragraph for:  
30 (1) the placement of nonstandard provisions, as  
31 defined in Rule 3015(c), along with a statement that

32 any nonstandard provision placed elsewhere in the  
33 plan is void; and  
34 (2) certification by the debtor’s attorney or by  
35 an unrepresented debtor that the plan contains  
36 no nonstandard provision other than those set out in  
37 the final paragraph.

#### **Committee Note**

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter 13 Plan Form. *See* Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the “hanging paragraph” of § 1325(a), and surrender of

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property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor's individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact that the plan contains a nonstandard provision, limits the amount of a secured claim based on a valuation of the collateral, or avoids a lien. The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard provisions placed elsewhere in the plan are void. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

## **Procedures for the Judicial Conference’s Committee on Rules of Practice and Procedure and Its Advisory Rules Committees**

(as codified in *Guide to Judiciary Policy*, Vol. 1, § 440)

### **§ 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 recorded. 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 Administrative Office of the United States Courts 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 Administrative Office of the United

States Courts 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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