

# **FEDERAL RULES OF BANKRUPTCY PROCEDURE 2020**

Complete Rules and Select Statutes in Effect as of February 1, 2020

**Extract**

## About the Book

Formatted and compiled with the practitioners and law students in mind, this edition of the Federal Rules of Bankruptcy Procedure 2020 has easy to read text on letter size pages that reads across the whole page (no dual columns); a detailed table of contents that allows you to quickly access the provision you need; key committee notes and congressional commentary; and select supplemental statutes of Title 28 covering bankruptcy jurisdiction, bankruptcy venue, removal, bankruptcy judges and trustees, and bankruptcy fees and costs.

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## Table of Contents

<b>FEDERAL RULES OF BANKRUPTCY PROCEDURE</b> .....	11
Rule 1001. Scope of Rules and Forms; Short Title .....	11
<b>PART I—COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF</b> .....	13
Rule 1002. Commencement of Case .....	13
Rule 1003. Involuntary Petition .....	14
Rule 1004. Involuntary Petition Against a Partnership .....	15
Rule 1004.1. Petition for an Infant or Incompetent Person .....	16
Rule 1004.2. Petition in Chapter 15 Cases .....	16
Rule 1005. Caption of Petition .....	17
Rule 1006. Filing Fee .....	18
Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits .....	20
Rule 1008. Verification of Petitions and Accompanying Papers .....	30
Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements .....	30
Rule 1010. Service of Involuntary Petition and Summons .....	31
Rule 1011. Responsive Pleading and Motion in Involuntary Cases .....	34
Rule 1012. Responsive Pleading in Cross-Border Cases .....	36
Rule 1013. Hearing and Disposition of a Petition in an Involuntary Case .....	37
Rule 1014. Dismissal and Change of venue .....	37
Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court .....	40
Rule 1016. Death or incompetency of Debtor .....	42
Rule 1017. Dismissal or Conversion of Case; Suspension .....	42
Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing Chapter 15 Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings .....	45
Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case .....	47
Rule 1020. Small Business Chapter 11 Reorganization Case .....	52
Rule 1021. Health Care Business Case .....	54
<b>PART II—OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS</b> .....	55

<b>Rule 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case .....</b>	<b>55</b>
<b>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 .....</b>	<b>56</b>
<b>Rule 2003. Meeting of Creditors or Equity Security Holders .....</b>	<b>71</b>
<b>Rule 2004. Examination .....</b>	<b>75</b>
<b>Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination .....</b>	<b>77</b>
<b>Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases .....</b>	<b>78</b>
<b>Rule 2007. Review of Appointment of Creditors' Committee Organized Before Commencement of the Case .....</b>	<b>82</b>
<b>Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case .....</b>	<b>83</b>
<b>Rule 2007.2. Appointment of Patient Care Ombudsman in a Health Care Business Case .....</b>	<b>86</b>
<b>Rule 2008. Notice to Trustee of Selection .....</b>	<b>87</b>
<b>Rule 2009. Trustees for Estates When Joint Administration Ordered .....</b>	<b>88</b>
<b>Rule 2010. Qualification by Trustee; Proceedings on Bond .....</b>	<b>90</b>
<b>Rule 2011. Evidence of Debtor in Possession or Qualification of Trustee .....</b>	<b>91</b>
<b>Rule 2012. Substitution of Trustee or Successor Trustee; Accounting .....</b>	<b>91</b>
<b>Rule 2013. Public Record of Compensation Awarded to Trustees, Examiners, and Professionals .....</b>	<b>92</b>
<b>Rule 2014. Employment of Professional Persons .....</b>	<b>93</b>
<b>Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status .....</b>	<b>94</b>
<b>Rule 2015.1. Patient Care Ombudsman .....</b>	<b>97</b>
<b>Rule 2015.2. Transfer of Patient in Health Care Business Case .....</b>	<b>99</b>
<b>Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest .....</b>	<b>99</b>
<b>Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses .....</b>	<b>101</b>
<b>Rule 2017. Examination of Debtor's Transactions with Debtor's Attorney .....</b>	<b>103</b>
<b>Rule 2018. Intervention; Right to Be Heard .....</b>	<b>104</b>
<b>Rule 2019. Disclosure Regarding Creditors and Equity Security Holders in Chapter 9 and Chapter 11 Cases .....</b>	<b>105</b>
<b>Rule 2020. Review of Acts by United States Trustee .....</b>	<b>109</b>

**PART III—CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST  
HOLDERS; PLANS**

<b>Rule 3001. Proof of Claim</b>	<b>110</b>
<b>Rule 3002. Filing Proof of Claim or Interest</b>	<b>116</b>
<b>Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence</b>	<b>120</b>
<b>Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases</b>	<b>124</b>
<b>Rule 3004. Filing of Claims by Debtor or Trustee</b>	<b>125</b>
<b>Rule 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor</b>	<b>127</b>
<b>Rule 3006. Withdrawal of Claim; Effect on Acceptance or Rejection of Plan</b>	<b>128</b>
<b>Rule 3007. Objections to Claims</b>	<b>129</b>
<b>Rule 3008. Reconsideration of Claims</b>	<b>133</b>
<b>Rule 3009. Declaration and Payment of Dividends in a Chapter 7 Liquidation Case</b>	<b>133</b>
<b>Rule 3010. Small Dividends and Payments in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases</b>	<b>134</b>
<b>Rule 3011. Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases</b>	<b>135</b>
<b>Rule 3012. Determining the Amount of Secured and Priority Claims</b>	<b>135</b>
<b>Rule 3013. Classification of Claims and Interests</b>	<b>136</b>
<b>Rule 3014. Election Under §1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case</b>	<b>136</b>
<b>Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 9 Municipality or a Chapter 13 Case</b>	<b>137</b>
<b>Rule 3015.1. Requirements for a Local Form for Plans Filed in a Chapter 13 Case</b>	<b>140</b>
<b>Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case</b>	<b>141</b>
<b>Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case</b>	<b>144</b>
<b>Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case</b>	<b>147</b>
<b>Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case</b>	<b>148</b>
<b>Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case</b>	<b>151</b>

Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case .....	152
Rule 3021. Distribution Under Plan .....	154
Rule 3022. Final Decree in Chapter 11 Reorganization Case .....	155
<b>PART IV—THE DEBTOR: DUTIES AND BENEFITS .....</b>	<b>157</b>
Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements .....	157
Rule 4002. Duties of Debtor .....	164
Rule 4003. Exemptions .....	166
Rule 4004. Grant or Denial of Discharge .....	168
Rule 4005. Burden of Proof in Objecting to Discharge .....	174
Rule 4006. Notice of No Discharge .....	174
Rule 4007. Determination of Dischargeability of a Debt .....	175
Rule 4008. Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement .....	176
<b>PART V—COURTS AND CLERKS .....</b>	<b>179</b>
Rule 5001. Courts and Clerks' Offices .....	179
Rule 5002. Restrictions on Approval of Appointments .....	179
Rule 5003. Records Kept By the Clerk .....	182
Rule 5004. Disqualification .....	184
Rule 5005. Filing and Transmittal of Papers .....	185
Rule 5006. Certification of Copies of Papers .....	189
Rule 5007. Records of Proceedings and Transcripts .....	190
Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors .....	190
Rule 5009. Closing Chapter 7, Chapter 12, Chapter 13, and Chapter 15 Cases; Order Declaring Lien Satisfied .....	191
Rule 5010. Reopening Cases .....	193
Rule 5011. Withdrawal and Abstention from Hearing a Proceeding .....	193
Rule 5012. Agreements Concerning Coordination of Proceedings in Chapter 15 Cases .....	194
<b>PART VI—COLLECTION AND LIQUIDATION OF THE ESTATE .....</b>	<b>196</b>
Rule 6001. Burden of Proof As to Validity of Postpetition Transfer .....	196
Rule 6002. Accounting by Prior Custodian of Property of the Estate .....	196

Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case—Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts .....	196
Rule 6004. Use, Sale, or Lease of Property .....	198
Rule 6005. Appraisers and Auctioneers .....	202
Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease.....	202
Rule 6007. Abandonment or Disposition of Property.....	205
Rule 6008. Redemption of Property from Lien or Sale.....	207
Rule 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession .....	207
Rule 6010. Proceeding to Avoid Indemnifying Lien or Transfer to Surety .....	207
Rule 6011. Disposal of Patient Records in Health Care Business Case .....	207
<b>PART VII—ADVERSARY PROCEEDINGS .....</b>	<b>210</b>
Rule 7001. Scope of Rules of Part VII .....	210
Rule 7002. References to Federal Rules of Civil Procedure .....	213
Rule 7003. Commencement of Adversary Proceedings .....	213
Rule 7004. Process; Service of Summons, Complaint.....	213
Rule 7005. Service and Filing of Pleadings and Other Papers .....	222
Rule 7007. Pleadings Allowed .....	222
Rule 7007.1. Corporate Ownership Statement .....	222
Rule 7008. General Rules of Pleading .....	223
Rule 7009. Pleading Special Matters.....	224
Rule 7010. Form of Pleading .....	224
Rule 7012. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings.....	224
Rule 7013. Counterclaim and Cross-Claim .....	226
Rule 7014. Third-Party Practice.....	226
Rule 7015. Amended and Supplemental Pleadings .....	226
Rule 7016. Pretrial Procedures.....	227
Rule 7017. Parties Plaintiff and Defendant; Capacity.....	227
Rule 7018. Joinder of Claims and Remedies .....	227
Rule 7019. Joinder of Persons Needed for Just Determination .....	227
Rule 7020. Permissive Joinder of Parties.....	228
Rule 7021. Misjoinder and Non-Joinder of Parties.....	228

<b>Rule 7022. Interpleader .....</b>	<b>228</b>
<b>Rule 7023. Class Proceedings .....</b>	<b>228</b>
<b>Rule 7023.1. Derivative Actions .....</b>	<b>229</b>
<b>Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations .....</b>	<b>229</b>
<b>Rule 7024. Intervention .....</b>	<b>229</b>
<b>Rule 7025. Substitution of Parties .....</b>	<b>229</b>
<b>Rule 7026. General Provisions Governing Discovery .....</b>	<b>229</b>
<b>Rule 7027. Depositions Before Adversary Proceedings or Pending Appeal .....</b>	<b>230</b>
<b>Rule 7028. Persons Before Whom Depositions May Be Taken .....</b>	<b>230</b>
<b>Rule 7029. Stipulations Regarding Discovery Procedure .....</b>	<b>230</b>
<b>Rule 7030. Depositions Upon Oral Examination .....</b>	<b>230</b>
<b>Rule 7031. Deposition Upon Written Questions .....</b>	<b>230</b>
<b>Rule 7032. Use of Depositions in Adversary Proceedings .....</b>	<b>230</b>
<b>Rule 7033. Interrogatories to Parties .....</b>	<b>231</b>
<b>Rule 7034. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes .....</b>	<b>231</b>
<b>Rule 7035. Physical and Mental Examination of Persons .....</b>	<b>231</b>
<b>Rule 7036. Requests for Admission .....</b>	<b>231</b>
<b>Rule 7037. Failure to Make Discovery; Sanctions .....</b>	<b>231</b>
<b>Rule 7040. Assignment of Cases for Trial .....</b>	<b>231</b>
<b>Rule 7041. Dismissal of Adversary Proceedings .....</b>	<b>231</b>
<b>Rule 7042. Consolidation of Adversary Proceedings; Separate Trials .....</b>	<b>232</b>
<b>Rule 7052. Findings by the Court .....</b>	<b>232</b>
<b>Rule 7054. Judgments; Costs .....</b>	<b>233</b>
<b>Rule 7055. Default .....</b>	<b>234</b>
<b>Rule 7056. Summary Judgment .....</b>	<b>234</b>
<b>Rule 7058. Entering Judgment in Adversary Proceeding .....</b>	<b>235</b>
<b>Rule 7062. Stay of Proceedings to Enforce a Judgment .....</b>	<b>235</b>
<b>Rule 7064. Seizure of Person or Property .....</b>	<b>236</b>
<b>Rule 7065. Injunctions .....</b>	<b>236</b>
<b>Rule 7067. Deposit in Court .....</b>	<b>236</b>
<b>Rule 7068. Offer of Judgment .....</b>	<b>236</b>
<b>Rule 7069. Execution .....</b>	<b>236</b>



Rule 7070. Judgment for Specific Acts; Vesting Title .....	236
Rule 7071. Process in Behalf of and Against Persons Not Parties .....	237
Rule 7087. Transfer of Adversary Proceeding .....	237
<b>PART VIII—APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL <sup>1</sup> ..</b>	<b>238</b>
Rule 8001. Scope of Part VIII Rules; Definition of "BAP"; Method of Transmission .....	238
Rule 8002. Time for Filing Notice of Appeal.....	239
Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal .....	242
Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal .....	243
Rule 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP .....	245
Rule 8006. Certifying a Direct Appeal to the Court of Appeals.....	246
Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings .....	249
Rule 8008. Indicative Rulings.....	250
Rule 8009. Record on Appeal; Sealed Documents .....	252
Rule 8010. Completing and Transmitting the Record .....	255
Rule 8011. Filing and Service; Signature.....	257
Rule 8012. Corporate Disclosure Statement.....	260
Rule 8013. Motions; Intervention.....	261
Rule 8014. Briefs .....	264
Rule 8015. Form and Length of Briefs; Form of Appendices and Other Papers.....	266
Rule 8016. Cross Appeals.....	269
Rule 8017. Briefs and Amicus Curiae.....	271
Rule 8018. Serving and Filing Briefs; Appendices.....	273
Rule 8018.1. District-Court Review of a Judgment that the Bankruptcy Court Lacked the Constitutional Authority to Enter.....	275
Rule 8019. Oral Argument.....	276
Rule 8020. Frivolous Appeal and Other Misconduct .....	277
Rule 8021. Costs.....	277
Rule 8022. Motion for Rehearing.....	278
Rule 8023. Voluntary Dismissal.....	279
Rule 8024. Clerk's Duties on Disposition of the Appeal .....	279
Rule 8025. Stay of a District Court or BAP Judgment.....	280
Rule 8026. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law .....	281

Rule 8027. Notice of a Mediation Procedure .....	281
Rule 8028. Suspension of Rules in Part VIII.....	281
<b>PART IX—GENERAL PROVISIONS .....</b>	<b>283</b>
Rule 9001. General Definitions .....	283
Rule 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under the Code.....	284
Rule 9003. Prohibition of Ex Parte Contacts.....	285
Rule 9004. General Requirements of Form .....	285
Rule 9005. Harmless Error.....	286
Rule 9005.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention.....	286
Rule 9006. Computing and Extending Time; Time for Motion Papers .....	286
Rule 9007. General Authority to Regulate Notices.....	296
Rule 9008. Service or Notice by Publication.....	296
Rule 9009. Forms .....	296
Rule 9010. Representation and Appearance; Power of Attorney .....	298
Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers.....	298
Rule 9012. Oaths and Affirmations.....	301
Rule 9013. Motions: Form and Service .....	301
Rule 9014. Contested Matters.....	302
Rule 9015. Jury Trials .....	304
Rule 9016. Subpoena .....	305
Rule 9017. Evidence.....	305
Rule 9018. Secret, Confidential, Scandalous, or Defamatory Matter .....	305
Rule 9019. Compromise and Arbitration.....	306
Rule 9020. Contempt Proceedings .....	306
Rule 9021. Entry of Judgment .....	308
Rule 9022. Notice of Judgment or Order .....	309
Rule 9023. New Trials; Amendment of Judgments .....	310
Rule 9024. Relief from Judgment or Order.....	310
Rule 9025. Security: Proceedings Against Security Providers .....	311
Rule 9026. Exceptions Unnecessary .....	312
Rule 9027. Removal .....	312

Rule 9028. Disability of a Judge .....	316
Rule 9029. Local Bankruptcy Rules; Procedure When There is No Controlling Law .....	317
Rule 9030. Jurisdiction and Venue Unaffected .....	319
Rule 9031. Masters Not Authorized .....	319
Rule 9032. Effect of Amendment of Federal Rules of Civil Procedure .....	319
Rule 9033. Proposed Findings of Fact and Conclusions of Law .....	319
Rule 9034. Transmittal of Pleadings, Motion Papers, Objections, and Other Papers to the United States Trustee .....	321
Rule 9035. Applicability of Rules in Judicial Districts in Alabama and North Carolina .....	321
Rule 9036. Notice and Service Generally .....	323
Rule 9037. Privacy Protection For Filings Made with the Court .....	324
OFFICIAL FORMS .....	328
APPENDIX .....	328
SELECT PROVISIONS OF TITLE 28, UNITED STATES CODE .....	329
28 USC CHAPTER 6—BANKRUPTCY JUDGES, Sec. 151-159 .....	329
§151. Designation of bankruptcy courts .....	329
§152. Appointment of bankruptcy judges .....	330
§153. Salaries; character of service .....	345
§154. Division of businesses; chief judge .....	347
§155. Temporary transfer of bankruptcy judges .....	347
§156. Staff; expenses .....	348
§157. Procedures .....	349
§158. Appeals .....	351
§159. Bankruptcy statistics .....	354
28 USC CHAPTER 39—UNITED STATES TRUSTEES, Sec. 581-589b .....	357
§581. United States trustees .....	357
§582. Assistant United States trustees .....	368
§583. Oath of office .....	369
§584. Official stations .....	369
§585. Vacancies .....	370
§586. Duties; supervision by Attorney General .....	370
§587. Salaries .....	377
§588. Expenses .....	377

§589. Staff and other employees.....	377
§589a. United States Trustee System Fund .....	378
§589b. Bankruptcy data.....	381
28 USC CHAPTER 85—DISTRICT COURTS; JURISDICTION, Sec. 1334 .....	383
§1334. Bankruptcy cases and proceedings .....	383
28 USC CHAPTER 87—DISTRICT COURTS; VENUE, Sec. 1408 .....	386
§1408. Venue of cases under title 11 .....	386
28 USC CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURT, Sec. 1452 .....	387
§1452. Removal of claims related to bankruptcy cases .....	387
28 USC Chapter 123—FEES AND COSTS, Sec. 1930 & 2075 .....	388
§1930. Bankruptcy fees .....	388
28 USC CHAPTER 131—RULES OF COURTS, Sec. 2075.....	395
§2075. Bankruptcy rules.....	395

Extract

# FEDERAL RULES OF BANKRUPTCY PROCEDURE

## Rule 1001. Scope of Rules and Forms; Short Title

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 27, 2017, eff. Dec. 1, 2017.)

### NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 247 of Public Law 95–598, 92 Stat. 2549 amended 28 U.S.C. §2075 by omitting the last sentence. The effect of the amendment is to require that procedural rules promulgated pursuant to 28 U.S.C. §2075 be consistent with the bankruptcy statute, both titles 11 and 28 U.S.C. Thus, although Rule 1001 sets forth the scope of the bankruptcy rules and forms, any procedural matters contained in title 11 or 28 U.S.C. with respect to cases filed under 11 U.S.C. would control. See 1 Collier, *Bankruptcy* 3.04 [2][c] (15th ed. 1980).

28 U.S.C. §151 establishes a United States Bankruptcy Court in each district as an adjunct to the district court. This provision does not, however, become effective until April 1, 1984. Public Law 95–598, §402(b). From October 1, 1979 through March 31, 1984, the courts of bankruptcy as defined in §1(10) of the Bankruptcy Act, and created in §2a of that Act continue to be the courts of bankruptcy. Public Law 95–598, §404(a). From the effective date these rules and forms are to be applicable in cases filed under chapters 7, 11 and 13 of title 11 regardless of whether the court is established by the Bankruptcy Act or by 28 U.S.C. §151. Rule 9001 contains a broad and general definition of "bankruptcy court," "court" and "United States Bankruptcy Court" for this purpose.

"Bankruptcy Code" or "Code" as used in these rules means title 11 of the United States Code, the codification of the bankruptcy law. Public Law 95–598, §101. See Rule 9001.

"Bankruptcy Act" as used in the notes to these rules means the Bankruptcy Act of 1898 as amended which was repealed by §501(a) of Public Law 95–598.

These rules apply to all cases filed under the Code except as otherwise specifically stated.

The final sentence of the rule is derived from former Bankruptcy Rule 903. The objective of "expeditious and economical administration" of cases under the Code has frequently been recognized by the courts to be "a chief purpose of the bankruptcy laws." See *Katchen v. Landy*, 382 U.S. 323, 328 (1966); *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 346–47 (1874); *Ex parte Christy*, 44 U.S. (3 How.) 292, 312–14, 320–22 (1845). The rule also incorporates the wholesome mandate of the last sentence of Rule 1 of the Federal Rules of Civil Procedure. 2 Moore, *Federal Practice* 1.13 (2d ed. 1980); 4 Wright & Miller, *Federal Practice and Procedure-Civil* §1029 (1969).

### NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

Title I of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98–353, 98 Stat. 333 (hereinafter the 1984 amendments), created a new bankruptcy judicial system in which the role of the district court was substantially increased. 28 U.S.C. §1334 confers on the United States district courts original and exclusive jurisdiction over all cases under title 11 of the

United States Code and original but not exclusive jurisdiction over civil proceedings arising under title 11 and civil proceedings arising in or related to a case under title 11.

Pursuant to 28 U.S.C. §157(a) the district court may but need not refer cases and proceedings within the district court's jurisdiction to the bankruptcy judges for the district. Judgments or orders of the bankruptcy judges entered pursuant to 28 U.S.C. §157(b)(1) and (c)(2) are subject to appellate review by the district courts or bankruptcy appellate panels under 28 U.S.C. §158(a).

Rule 81(a)(1) F.R.Civ.P. provides that the civil rules do not apply to proceedings in bankruptcy, except as they may be made applicable by rules promulgated by the Supreme Court, *e.g.*, Part VII of these rules. This amended Bankruptcy Rule 1001 makes the Bankruptcy Rules applicable to cases and proceedings under title 11, whether before the district judges or the bankruptcy judges of the district.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

The citation to these rules is amended to conform to the citation form of the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, and Federal Rules of Criminal Procedure.

#### **COMMITTEE NOTES ON RULES—2017 AMENDMENT**

The last sentence of the rule is amended to incorporate the changes to Rule 1 F.R.Civ.P. made in 1993 and 2015.

The word "administered" is added to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that bankruptcy cases and the proceedings within them are resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

The addition of the phrase "employed by the court and the parties" emphasizes that parties share in the duty of using the rules to secure the just, speedy, and inexpensive determination of every case and proceeding. Achievement of this goal depends upon cooperative and proportional use of procedure by lawyers and parties.

This amendment does not create a new or independent source of sanctions. Nor does it abridge the scope of any other of these rules.

# **PART I—COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF**

## **Rule 1002. Commencement of Case**

(a) **Petition.** A petition commencing a case under the Code shall be filed with the clerk.

(b) **Transmission to United States Trustee.** The clerk shall forthwith transmit to the United States trustee a copy of the petition filed pursuant to subdivision (a) of this rule.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

Under §§301–303 of the Code, a voluntary or involuntary case is commenced by filing a petition with the bankruptcy court. The voluntary petition may request relief under chapter 7, 9, 11, or 13 whereas an involuntary petition may be filed only under chapter 7 or 11. Section 109 of the Code specifies the types of debtors for whom the different forms of relief are available and §303(a) indicates the persons against whom involuntary petitions may be filed.

The rule in subdivision (a) is in harmony with the Code in that it requires the filing to be with the bankruptcy court.

The number of copies of the petition to be filed is specified in this rule but a local rule may require additional copies. This rule provides for filing sufficient copies for the court's files and for the trustee in a chapter 7 or 13 case.

Official Form No. 1 may be used to seek relief voluntarily under any of the chapters. Only the original need be signed and verified, but the copies must be conformed to the original. See Rules 1008 and 9011(c). As provided in §362 of the Code, the filing of a petition acts as a stay of certain acts and proceedings against the debtor, property of the debtor, and property of the estate.

### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

Rules 1002(a), governing a voluntary petition, 1003(a), governing an involuntary petition, and 1003(e), governing a petition in a case ancillary to a foreign proceeding, are combined into this Rule 1002. If a bankruptcy clerk has been appointed for the district, the petition is filed with the bankruptcy clerk. Otherwise the petition is filed with the clerk of the district court.

The elimination of the reference to the Official Forms of the petition is not intended to change the practice. Rule 9009 provides that the Official Forms "shall be observed and used" in cases and proceedings under the Code.

*Subdivision (b)* which provided for the distribution of copies of the petition to agencies of the United States has been deleted. Some of these agencies no longer wish to receive copies of the petition, while others not included in subdivision (b) have now requested copies. The Director of the Administrative Office will determine on an ongoing basis which government agencies will be provided a copy of the petition.

The number of copies of a petition that must be filed is a matter for local rule.

### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

*Subdivision (b)* is derived from Rule X–1002(a). The duties of the United States trustee pursuant to the Code and 28 U.S.C. §586(a) require that the United States trustee be apprised of the commencement of every case under chapters 7, 11, 12 and 13 and this is most easily accomplished by providing that office with a copy of the petition. Although 28 U.S.C. §586(a) does not give the United States trustee an administrative role in chapter 9 cases, §1102 of the Code

requires the United States trustee to appoint committees and that section is applicable in chapter 9 cases pursuant to §901(a). It is therefore appropriate that the United States trustee receive a copy of every chapter 9 petition.

Notwithstanding subdivision (b), pursuant to Rule 5005(b)(3), the clerk is not required to transmit a copy of the petition to the United States trustee if the United States trustee requests that it not be transmitted. Many rules require the clerk to transmit a certain document to the United States trustee, but Rule 5005(b)(3) relieves the clerk of that duty under this or any other rule if the United States trustee requests that such document not be transmitted.

### **Rule 1003. Involuntary Petition**

**(a) Transferor or Transferee of Claim.** A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.

**(b) Joinder of Petitioners After Filing.** If the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as provided in §303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

*Subdivision (a).* Official Form No. 11 (Involuntary Case: Creditors' Petition), is prescribed for use by petitioning creditors to have a debtor's assets liquidated under chapter 7 of the Code or the business reorganized under chapter 11. It contains the required allegations as specified in §303(b) of the Code. Official Form 12 is prescribed for use by fewer than all the general partners to obtain relief for the partnership as governed by §303(b)(3) of the Code and Rule 1004(b).

Although the number of copies to be filed is specified in Rule 1002, a local rule may require additional copies.

Only the original need be signed and verified, but the copies must be conformed to the original. See Rules 1008 and 9011(c). The petition must be filed with the bankruptcy court. This provision implements §303(b) which provides that an involuntary case is commenced by filing the petition with the court.

As provided in §362 of the Code, the filing of the petition acts as a stay of certain acts and proceedings against the debtor, the debtor's property and property of the estate.

*Subdivision (c)* retains the explicitness of former Bankruptcy Rule 104(d) that a transfer of a claim for the purpose of commencing a case under the Code is a ground for disqualification of a party to the transfer as a petitioner.

Section 303(b) "is not intended to overrule Bankruptcy Rule 104(d), which places certain restrictions on the transfer of claims for the purpose of commencing an involuntary case." House Report No. 95-595, 95th Cong., 1st Sess. (1977) 322; Senate Report No. 95-989, 95th Cong., 2d Sess. (1978) 33.



The subdivision requires disclosure of any transfer of the petitioner's claim as well as a transfer to the petitioner and applies to transfers for security as well as unconditional transfers, *Cf. In re 69th & Crandon Bldg. Corp.*, 97 F.2d 392, 395 (7th Cir.), cert. denied, 305 U.S. 629 (1938), recognizing the right of a creditor to sign a bankruptcy petition notwithstanding a prior assignment of his claim for the purpose of security. This rule does not, however, qualify the requirement of §303(b)(1) that a petitioning creditor must have a claim not contingent as to liability.

*Subdivision (d).* Section 303(c) of the Code permits a creditor to join in the petition at any time before the case is dismissed or relief is ordered. While this rule does not require the court to give all creditors notice of the petition, the list of creditors filed by the debtor affords a petitioner the information needed to enable him to give notice for the purpose of obtaining the co-petitioners required to make the petition sufficient. After a reasonable opportunity has been afforded other creditors to join in an involuntary petition, the hearing on the petition should be held without further delay.

*Subdivision (e).* This subdivision implements §304. A petition for relief under §304 may only be filed by a foreign representative who is defined in §101(20) generally as a representative of an estate in a foreign proceeding. The term "foreign proceeding" is defined in §101(19).

Section 304(b) permits a petition filed thereunder to be contested by a party in interest. Subdivision (e)(2) therefore requires that the summons and petition be served on any person against whom the relief permitted by §304(b) is sought as well as on any other party the court may direct.

The rules applicable to the procedure when an involuntary petition is filed are made applicable generally when a case ancillary to a foreign proceeding is commenced. These rules include Rule 1010 with respect to issuance and service of a summons, Rule 1011 concerning responsive pleadings and motions, and Rule 1018 which makes various rules in Part VII applicable in proceedings on contested petitions.

The venue for a case ancillary to a foreign proceeding is provided in 28 U.S.C. §1474.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

The subject matter of subdivisions (a), (b), and (e) has been incorporated in Rules 1002, 1010, 1011, and 1018.

### **Rule 1004. Involuntary Petition Against a Partnership**

After filing of an involuntary petition under §303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall promptly send to or serve on each general partner who is not a petitioner a copy of the petition; and (2) the clerk shall promptly issue a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons. (As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

This rule is adapted from former Bankruptcy Rule 105 and complements §§301 and 303(b)(3) of the Code.

*Subdivision (a)* specifies that while all general partners must consent to the filing of a voluntary petition, it is not necessary that they all execute the petition. It may be executed and filed on behalf of the partnership by fewer than all.

*Subdivision (b)* implements §303(b)(3) of the Code which provides that an involuntary petition may be filed by fewer than all the general partners or, when all the general partners are debtors,

by a general partner, trustee of the partner or creditors of the partnership. Rule 1010, which governs service of a petition and summons in an involuntary case, specifies the time and mode of service on the partnership. When a petition is filed against a partnership under §303(b)(3), this rule requires an additional service on the nonfiling general partners. It is the purpose of this subdivision to protect the interests of the nonpetitioning partners and the partnership.

#### COMMITTEE NOTES ON RULES—2002 AMENDMENT

Section 303(b)(3)(A) of the Code provides that fewer than all of the general partners in a partnership may commence an involuntary case against the partnership. There is no counterpart provision in the Code setting out the manner in which a partnership commences a voluntary case. The Supreme Court has held in the corporate context that applicable nonbankruptcy law determines whether authority exists for a particular debtor to commence a bankruptcy case. See *Price v. Gurney*, 324 U.S. 100 (1945). The lower courts have followed this rule in the partnership context as well. See, e.g., *Jolly v. Pittore*, 170 B.R. 793 (S.D.N.Y. 1994); *Union Planters National Bank v. Hunters Horn Associates*, 158 B.R. 729 (Bankr. M.D. Tenn. 1993); *In re Channel 64 Joint Venture*, 61 B.R. 255 (Bankr. S.D. Oh. 1986). Rule 1004(a) could be construed as requiring the consent of all of the general partners to the filing of a voluntary petition, even if fewer than all of the general partners would have the authority under applicable nonbankruptcy law to commence a bankruptcy case for the partnership. Since this is a matter of substantive law beyond the scope of these rules, Rule 1004(a) is deleted as is the designation of subdivision (b).

The rule is retitled to reflect that it applies only to involuntary petitions filed against partnerships.

*Changes Made After Publication and Comments.* No changes since publication.

#### Rule 1004.1. Petition for an Infant or Incompetent Person

If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

(Added Apr. 29, 2002, effective Dec. 1, 2002.)

#### COMMITTEE NOTES ON RULES—2002

This rule is derived from Rule 17(c) F.R. Civ. P. It does not address the commencement of a case filed on behalf of a missing person. See, e.g., *In re King*, 234 B.R. 515 (Bankr. D.N.M. 1999).

*Changes Made After Publication and Comments.* No changes were made.

#### Rule 1004.2. Petition in Chapter 15 Cases

(a) **Designating Center of Main Interests.** A petition for recognition of a foreign proceeding under chapter 15 of the Code shall state the country where the debtor has its center of main interests. The petition shall also identify each country in which a foreign proceeding by, regarding, or against the debtor is pending.

(b) **Challenging Designation.** The United States trustee or a party in interest may file a motion for a determination that the debtor's center of main interests is other than as stated in the petition for recognition commencing the chapter 15 case. Unless the court orders otherwise, the motion shall be filed no later than seven days before the date set for the hearing on the petition. The motion shall be transmitted to the United States trustee and served on the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom

## **PART II—OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS**

### **Rule 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case**

(a) Appointment. At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may order the appointment of an interim trustee under §303(g) of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the petitioning creditors, the United States trustee, and other parties in interest as the court may designate.

(b) Bond of Movant. An interim trustee may not be appointed under this rule unless the movant furnishes a bond in an amount approved by the court, conditioned to indemnify the debtor for costs, attorney's fee, expenses, and damages allowable under §303(i) of the Code.

(c) Order of Appointment. The order directing the appointment of an interim trustee shall state the reason the appointment is necessary and shall specify the trustee's duties.

(d) Turnover and Report. Following qualification of the trustee selected under §702 of the Code, the interim trustee, unless otherwise ordered, shall (1) forthwith deliver to the trustee all the records and property of the estate in possession or subject to control of the interim trustee and, (2) within 30 days thereafter file a final report and account.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

This rule is adapted from former Bankruptcy Rule 201. See also former Chapter X Rule 10–201. In conformity with title 11 of the United States Code, this rule substitutes "interim trustee" for "receiver." Subdivision (a) and (e) of Rule 201 are not included because the provisions contained therein are found in detail in §303(g) of the Code, or they are inconsistent with §701 of the Code. Similarly, the provision in Rule 201(f) relating to a debtor's counterbond are not included because of their presence in §303(g).

*Subdivision (a)* makes clear that the court may not on its own motion order the appointment of an interim trustee before an order for relief is entered. Appointment may be ordered only on motion of a party in interest.

*Subdivision (b)* requires those seeking the appointment of an interim trustee to furnish a bond. The bond may be the same one required of petitioning creditors under §303(e) of the Code to indemnify the debtor for damages allowed by the court under §303(i).

*Subdivision (c)* requires that the order specify which duties enumerated in §303(g) shall be performed by the interim trustee. Reference should be made to Rule 2015 for additional duties required of an interim trustee including keeping records and filing periodic reports with the court.

*Subdivision (d)* requires turnover of records and property to the trustee selected under §702 of the Code, after qualification. That trustee may be the interim trustee who becomes the trustee because of the failure of creditors to elect one under §702(d) or the trustee elected by creditors under §702(b), (c).

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

This rule is amended to conform to §303(g) of the Code which provides that the United States trustee appoints the interim trustee. See Rule X–1003. This rule does not apply to the exercise by the court of the power to act sua sponte pursuant to §105(a) of the Code.

## **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**

(a) **Twenty-One-Day Notices to Parties in Interest.** Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

(1) the meeting of creditors under §341 or §1104(b) of the Code, which notice, unless the court orders otherwise, shall include the debtor's employer identification number, social security number, and any other federal taxpayer identification number;

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

(3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent;

(4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under §707(a)(3) or §707(b) or is on dismissal of the case for failure to pay the filing fee;

(5) the time fixed to accept or reject a proposed modification of a plan;

(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000;

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c);

(8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan; and

(9) the time fixed for filing objections to confirmation of a chapter 13 plan.

(b) **Twenty-Eight-Day Notices to Parties in Interest.** Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under §1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; (2) for filing objections and the hearing to consider confirmation of a chapter 9 or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.

(c) **Content of Notice.**

(1) **Proposed Use, Sale, or Lease of Property.** Subject to Rule 6004, the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property. The notice of a proposed sale or lease of personally identifiable information under §363(b)(1) of the Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information.

(2) **Notice of Hearing on Compensation.** The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(6) of this rule shall identify the applicant and the amounts requested.

**(3) Notice of Hearing on Confirmation When Plan Provides for an Injunction.** If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall:

**(A)** include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction;

**(B)** describe briefly the nature of the injunction; and

**(C)** identify the entities that would be subject to the injunction.

**(d) Notice to Equity Security Holders.** In a chapter 11 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders held pursuant to §341 of the Code; (3) the hearing on the proposed sale of all or substantially all of the debtor's assets; (4) the hearing on the dismissal or conversion of a case to another chapter; (5) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (6) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (7) the time fixed to accept or reject a proposed modification of a plan.

**(e) Notice of No Dividend.** In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

**(f) Other Notices.** Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, creditors, and indenture trustees notice by mail of:

**(1)** the order for relief;

**(2)** the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under §305;

**(3)** the time allowed for filing claims pursuant to Rule 3002;

**(4)** the time fixed for filing a complaint objecting to the debtor's discharge pursuant to §727 of the Code as provided in Rule 4007;

**(5)** the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to §523 of the Code as provided in Rule 4007;

**(6)** the waiver, denial, or revocation of a discharge as provided in Rule 4006;

**(7)** entry of an order confirming a chapter 9, 11, or 12 plan;

**(8)** a summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed \$1,500;

**(9)** a notice under Rule 5018 regarding the presumption of abuse;

**(10)** a statement under §704(b)(1) as to whether the debtor's case would be presumed to be an abuse under §707(b); and

**(11)** the time to request a delay in the entry of the discharge under §§1141(d)(5)(C), 1228(f), and 1328(h). Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).

**(g) Addressing Notices.**

**(1)** Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision—

**(A)** a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and

**(B)** a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.

**(2)** Except as provided in §342(f) of the Code, if a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of equity security holders.

**(3)** If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim.

**(4)** Notwithstanding Rule 2002(g)(1)–(3), an entity and a notice provider may agree that when the notice provider is directed by the court to give a notice, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law.

**(5)** A creditor may treat a notice as not having been brought to the creditor's attention under §342(g)(1) only if, prior to issuance of the notice, the creditor has filed a statement that designates the name and address of the person or organizational subdivision of the creditor responsible for receiving notices under the Code, and that describes the procedures established by the creditor to cause such notices to be delivered to the designated person or subdivision.

**(h)** Notices to Creditors Whose Claims are Filed. In a chapter 7 case, after 90 days following the first date set for the meeting of creditors under §341 of the Code, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

**(i)** Notices to Committees. Copies of all notices required to be mailed pursuant to this rule shall be mailed to the committees elected under §705 or appointed under §1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected under §705 or appointed under §1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed under §1114 shall receive copies of all notices required by subdivisions (a)(1), (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.

**(j)** Notices to the United States. Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a written request to receive notices; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case, to the Internal Revenue Service at its address set out in the register maintained under Rule 5003(e) for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which

the debtor became indebted; or (5) if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

**(k) Notices to United States Trustee.** Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules requires the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. §78aaaa *et. seq.*

**(l) Notice by Publication.** The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.

**(m) Orders Designating Matter of Notices.** The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

**(n) Caption.** The caption of every notice given under this rule shall comply with Rule 1005. The caption of every notice required to be given by the debtor to a creditor shall include the information required to be in the notice by §342(c) of the Code.

**(o) Notice of Order for Relief in Consumer Case.** In a voluntary case commenced by an individual debtor whose debts are primarily consumer debts, the clerk or some other person as the court may direct shall give the trustee and all creditors notice by mail of the order for relief within 21 days from the date thereof.

**(p) Notice to a Creditor With a Foreign Address.**

**(1)** If, at the request of the United States trustee or a party in interest, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged.

**(2)** Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are mailed shall be given at least 30 days' notice of the time fixed for filing a proof of claim under Rule 3002(c) or Rule 3003(c).

**(3)** Unless the court for cause orders otherwise, the mailing address of a creditor with a foreign address shall be determined under Rule 2002(g).

**(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.

**(2) Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives.** The clerk, or some other person as the court may direct, shall 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, notice by mail of the court's intention to communicate with a foreign court or foreign representative.

(As amended Pub. L. 98–91, §2(a), Aug. 30, 1983, 97 Stat. 607; Pub. L. 98–353, title III, §321, July 10, 1984, 98 Stat. 357; Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 23, 2001, eff. Dec. 1, 2001; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 26, 2004, eff. Dec. 1, 2004; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 27, 2017, eff. Dec. 1, 2017.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

Some of the notices required by this rule may be given either by the clerk or as the court may otherwise direct. For example, the court may order the trustee or debtor in possession to transmit one or more of the notices required by this rule, such as, notice of a proposed sale of property. See §363(b) of the Code. When publication of notice is required, if desirable, reference should be made to Rule 9008.

Notice of the order for relief is required to be given by §542 of the Code and by subdivision (f)(1) of this rule. That notice may be combined with the notice of the meeting of creditors as indicated in Official Form No. 16, the notice and order of the meeting of creditors.

*Subdivision (a)* sets forth the requirement that 20 days notice be given of the significant events in a case under the Bankruptcy Code. The former Act and Rules provided a ten day notice in bankruptcy and Chapter X cases, and a 15 day notice in a Chapter X case. This rule generally makes uniform the 20 day notice provision except that subdivision (b) contains a 25 day period for certain events in a Chapter 11, or 12 case. Generally, Rule 9006 permits reduction of time periods. Since notice by mail is complete on mailing, the requirement of subdivision (a) is satisfied if the notices are deposited in the mail at least 20 days before the event. See Rule 9006(e). The exceptions referred to in the introductory phrase include the modifications in the notice procedure permitted by subdivision (h) as to non-filing creditors, subdivision (i) as to cases where a committee is functioning, and subdivision (k) where compliance with subdivision (a) is impracticable.

The notice of a proposed sale affords creditors an opportunity to object to the sale and raise a dispute for the court's attention. Section 363(b) of the Code permits the trustee or debtor in possession to sell property, other than in the ordinary course of business, only after notice and hearing. If no objection is raised after notice, §102(1) provides that there need not be an actual hearing. Thus, absent objection, there would be no court involvement with respect to a trustee's sale. Once an objection is raised, only the court may pass on it.

Prior to the Code the court could shorten the notice period for a proposed sale of property or dispense with notice. This subdivision (a), permits the 20 day period to be shortened in appropriate circumstances but the rule does not contain a provision allowing the court to dispense with notice. The rule is thus consistent with the Code, §§363(b) and 102(1)(A) of the Code. See 28 U.S.C. §2075. It may be necessary, in certain circumstances, however, to use a method of



notice other than mail. Subdivision (a)(2) vests the court with discretion, on cause shown, to order a different method. Reference should also be made to Rule 6004 which allows a different type of notice of proposed sales when the property is of little value.

Notice of the hearing on an application for compensation or reimbursement of expenses totalling \$100 or less need not be given. In chapter 13 cases relatively small amounts are sometimes allowed for post-confirmation services and it would not serve a useful purpose to require advance notice.

*Subdivision (b)* is similar to subdivision (a) but lengthens the notice time to 25 days with respect to those events particularly significant in chapter 9, 11 and 13 cases. The additional time may be necessary to formulate objections to a disclosure statement or confirmation of a plan and preparation for the hearing on approval of the disclosure statement or confirmation. The disclosure statement and hearing thereon is only applicable in chapter 9 cases (§901(a) of the Code), and chapter 11 cases (§1125 of the Code).

*Subdivision (c)* specifies certain matters that should be included in the notice of a proposed sale of property and notice of the hearing on an application for advances. Rule 6004 fixes the time within which parties in interest may file objections to a proposed sale of property.

*Subdivision (d)* relates exclusively to the notices given to equity security holders in chapter 11 cases. Under chapter 11, a plan may impair the interests of the debtor's shareholders or a plan may be a relatively simple restructuring of unsecured debt. In some cases, it is necessary that equity interest holders receive various notices and in other cases there is no purpose to be served. This subdivision indicates that the court is not mandated to order notices but rather that the matter should be treated with some flexibility. The court may decide whether notice is to be given and how it is to be given. Under §341(b) of the Code, a meeting of equity security holders is not required in each case, only when it is ordered by the court. Thus subdivision (d)(2) requires notice only when the court orders a meeting.

In addition to the notices specified in this subdivision, there may be other events or matters arising in a case as to which equity security holders should receive notice. These are situations left to determination by the court.

*Subdivision (e)*, authorizing a notice of the apparent insufficiency of assets for the payment of any dividend, is correlated with Rule 6002(c)(5), which provides for the issuance of an additional notice to creditors if the possibility of a payment later materializes.

*Subdivision (f)* provides for the transmission of other notices to which no time period applies. Clause (1) requires notice of the order for relief; this complements the mandate of §342 of the Code requiring such notice as is appropriate of the order for relief. This notice may be combined with the notice of the meeting of creditors to avoid the necessity of more than one mailing. See Official Form No. 16, notice of meeting of creditors.

*Subdivision (g)* recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate where notices to the creditor he represents should be addressed. Agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him. It should be noted that Official Forms Nos. 17 and 18 do not include an authorization of the holder of a power of attorney to receive notices for the creditor. Neither these forms nor this rule carries any implication that such an authorization may not be given in a power of attorney or that a request for notices to be addressed to both the creditor or his duly authorized agent may not be filed.

*Subdivision (h).* After the time for filing claims has expired in a chapter 7 case, creditors who have not filed their claims in accordance with Rule 3002(c) are not entitled to share in the estate except as they may come within the special provisions of §726 of the Code or Rule 3002(c)(6). The elimination of notice to creditors who have no recognized stake in the estate may permit economies in time and expense. Reduction of the list of creditors to receive notices under this subdivision is discretionary. This subdivision does not apply to the notice of the meeting of creditors.

*Subdivision (i)* contains a list of matters of which notice may be given a creditors' committee or to its authorized agent in lieu of notice to the creditors. Such notice may serve every practical purpose of a notice to all the creditors and save delay and expense. *In re Schulte-United, Inc.*, 59 F.2d 553, 561 (8th Cir. 1932).

*Subdivision (j).* The premise for the requirement that the district director of internal revenue receive copies of notices that all creditors receive in a chapter 11 case is that every debtor is potentially a tax debtor of the United States. Notice to the district director alerts him to the possibility that a tax debtor's estate is about to be liquidated or reorganized and that the debtor may be discharged. When other indebtedness to the United States is indicated, the United States attorney is notified as the person in the best position to protect the interests of the government. In addition, the provision requires notice by mail to the head of any department, agency, or instrumentality of the United States through whose action the debtor became indebted to the United States. This rule is not intended to preclude a local rule from requiring a state or local tax authority to receive some or all of the notices to creditors under these rules.

*Subdivision (k)* specifies two kinds of situations in which notice by publication may be appropriate: (1) when notice by mail is impracticable; and (2) when notice by mail alone is less than adequate. Notice by mail may be impracticable when, for example, the debtor has disappeared or his records have been destroyed and the names and addresses of his creditors are unavailable, or when the number of creditors with nominal claims is very large and the estate to be distributed may be insufficient to defray the costs of issuing the notices. Supplementing notice by mail is also indicated when the debtor's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Rule 9008 applies when the court directs notice by publication under this rule. Neither clause (2) of subdivision (a) nor subdivision (k) of this rule is concerned with the publication of advertisement to the general public at a sale of property of the estate at public auction under Rule 6004(b). See 3 Collier, *Bankruptcy* 522–23 (14th ed. 1971); 4B *id.* 1165–67 (1967); 2 *id.* 363.03 (15th ed. 1981).

*Subdivision (m).* Inclusion in notices to creditors of information as to other names used by the debtor as required by Rule 1005 will assist them in the preparation of their proofs of claim and in deciding whether to file a complaint objecting to the debtor's discharge. Additional names may be listed by the debtor on his statement of affairs when he did not file the petition. The mailing of notices should not be postponed to await a delayed filing of the statement of financial affairs.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

*Subdivision (a)* is amended to provide that notice of a hearing on an application for compensation must be given only when the amount requested is in excess of \$500.

*Subdivision (d).* A new notice requirement is added as clause (3). When a proposed sale is of all or substantially all of the debtor's assets, it is appropriate that equity security holders be given notice of the proposed sale. The clauses of subdivision (d) are renumbered to accommodate this addition.

*Subdivision (f).* Clause (7) is eliminated. Mailing of a copy of the discharge order is governed by Rule 4004(g).

*Subdivision (g)* is amended to relieve the clerk of the duty to mail notices to the address shown in a proof of claim when a notice of no dividend has been given pursuant to Rule 2002. This amendment avoids the necessity of the clerk searching proofs of claim which are filed in no dividend cases to ascertain whether a different address is shown.

*Subdivision (n)* was enacted by §321 of the 1984 amendments.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

*Subdivision (a)(3)* is amended to exclude compromise or settlement agreements concerning adequate protection or which modify or terminate the automatic stay, provide for use of cash collateral, or create a senior or equal lien on collateral to obtain credit. Notice requirements relating to approval of such agreements are governed by Rule 4001(d).

*Subdivision (a)(5)* is amended to include a hearing on dismissal or conversion of a chapter 12 case. This subdivision does not apply when a hearing is not required. It is also amended to avoid the necessity of giving notice to all creditors of a hearing on the dismissal of a consumer debtor's case based on substantial abuse of chapter 7. Such hearings on dismissal under §707(b) of the Code are governed by Rule 1017(e).

*Subdivision (a)(9)* is added to provide for notice of the time fixed for filing objections and the hearing to consider confirmation of a plan in a chapter 12 case. Section 1224 of the Code requires "expedited notice" of the confirmation hearing in a chapter 12 case and requires that the hearing be concluded not later than 45 days after the filing of the plan unless the time is extended for cause. This amendment establishes 20 days as the notice period. The court may shorten this time on its own motion or on motion of a party in interest. The notice includes both the date of the hearing and the date for filing objections, and must be accompanied by a copy of the plan or a summary of the plan in accordance with Rule 1015(d).

*Subdivision (b)* is amended to delete unnecessary the references to subdivisions (h) and (i).

*Subdivision (d)* does not require notice to equity security holders in a chapter 12 case. The procedural burden of requiring such notice is outweighed by the likelihood that all equity security holders of a family farm will be informed of the progress of the case without formal notice. Subdivision (d) is amended to recognize that the United States trustee may convene a meeting of equity security holders pursuant to §341(b).

*Subdivision (f)(2)* is amended and subdivision (f)(4) is deleted to require notice of any conversion of the case, whether the conversion is by court order or is effectuated by the debtor filing a notice of conversion pursuant to §§1208(a) or 1307(a). Subdivision (f)(8), renumbered (f)(7), is amended to include entry of an order confirming a chapter 12 plan. Subdivision (f)(9) is amended to increase the amount to \$1,500.

*Subdivisions (g) and (j)* are amended to delete the words "with the court" and subdivision (i) is amended to delete the words "with the clerk" because these phrases are unnecessary. See Rules 5005(a) and 9001(3).

*Subdivision (i)* is amended to require that the United States trustee receive notices required by subdivision (a)(2), (3) and (7) of this rule notwithstanding a court order limiting such notice to committees and to creditors and equity security holders who request such notices. Subdivision (i) is amended further to include committees elected pursuant to §705 of the Code and to provide that committees of retired employees appointed in chapter 11 cases receive certain notices.

*Subdivision (k)* is derived from Rule X-1008. The administrative functions of the United States trustee pursuant to 28 U.S.C. §586(a) and standing to be heard on issues under §307 and other sections of the Code require that the United States trustee be informed of developments and issues in every case except chapter 9 cases. The rule omits those notices described in subdivision (a)(1) because a meeting of creditors is convened only by the United States trustee, and those notices described in subdivision (a)(4) (date fixed for filing claims against a surplus), subdivision (a)(6) (time fixed to accept or reject proposed modification of a plan), subdivision (a)(8) (time fixed for filing proofs of claims in chapter 11 cases), subdivision (f)(3) (time fixed for filing claims in chapter 7, 12, and 13 cases), and subdivision (f)(5) (time fixed for filing complaint to determine dischargeability of debt) because these notices do not relate to matters that generally involve the United States trustee. Nonetheless, the omission of these notices does not prevent the United States trustee from receiving such notices upon request. The United States trustee also receives notice of hearings on applications for compensation or reimbursement without regard to the \$500 limitation contained in subdivision (a)(7) of this rule. This rule is intended to be flexible in that it permits the United States trustee in a particular judicial district to request notices in certain categories, and to request not to receive notices in other categories, when the practice in that district makes that desirable.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1995 AMENDMENT**

*Subdivision (j)* is amended to avoid the necessity of sending an additional notice to the Washington, D.C. address of the Securities and Exchange Commission if the Commission prefers to have notices sent only to a local office. This change also clarifies that notices required to be mailed pursuant to this rule must be sent to the Securities and Exchange Commission only if it has filed a notice of appearance or has filed a written request. Other amendments are stylistic and make no substantive change.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1996 AMENDMENT**

*Paragraph (a)(4)* is abrogated to conform to the abrogation of Rule 3002(c)(6). The remaining paragraphs of subdivision (a) are renumbered, and references to these paragraphs contained in other subdivisions of this rule are amended accordingly.

*Paragraph (f)(8)* is amended so that a summary of the trustee's final account, which is prepared after distribution of property, does not have to be mailed to the debtor, all creditors, and indenture trustees in a chapter 7 case. Parties are sufficiently protected by receiving a summary of the trustee's final report that informs parties of the proposed distribution of property.

*Subdivision (h)* is amended (1) to provide that an order under this subdivision may not be issued if a notice of no dividend is given pursuant to Rule 2002(e) and the time for filing claims has not expired as provided in Rule 3002(c)(5); (2) to clarify that notices required to be mailed by subdivision (a) to parties other than creditors must be mailed to those entities despite an order issued pursuant to subdivision (h); (3) to provide that if the court, pursuant to Rule 3002(c)(1) or 3002(c)(2), has granted an extension of time to file a proof of claim, the creditor for whom the extension has been granted must continue to receive notices despite an order issued pursuant to subdivision (h); and (4) to delete references to subdivision (a)(4) and Rule 3002(c)(6), which have been abrogated.

Other amendments to this rule are stylistic.

*GAP Report on Rule 2002.* No changes since publication, except for stylistic changes and the correction of a typographical error in the committee note.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1997 AMENDMENT**

*Paragraph (a)(1)* is amended to include notice of a meeting of creditors convened under §1104(b) of the Code for the purpose of electing a trustee in a chapter 11 case. The court for cause shown may order the 20-day period reduced pursuant to Rule 9006(c)(1).

*Subdivision (n)* is amended to conform to the 1994 amendment to §342 of the Code. As provided in §342(c), the failure of a notice given by the debtor to a creditor to contain the information required by §342(c) does not invalidate the legal effect of the notice.

*GAP Report on Rule 2002.* No changes to the published draft.

#### **COMMITTEE NOTES ON RULES—1999 AMENDMENT**

*Paragraph (a)(4)* is amended to conform to the amendments to Rule 1017. If the United States trustee files a motion to dismiss a case for the debtor's failure to file the list of creditors, schedules, or the statement of financial affairs within the time specified in §707(a)(3), the amendments to this rule and to Rule 1017 eliminate the requirement that all creditors receive notice of the hearing.

Paragraph (a)(4) is amended further to conform to Rule 1017(b), which requires that notice of the hearing on dismissal of a case for failure to pay the filing fee be served on only the debtor and the trustee.

*Paragraph (f)(2)* is amended to provide for notice of the suspension of proceedings under §305.

*GAP Report on Rule 2002.* No changes since publication.

#### **COMMITTEE NOTES ON RULES—2000 AMENDMENT**

*Paragraph (a)(6)* is amended to increase the dollar amount from \$500 to \$1,000. The amount was last amended in 1987, when it was changed from \$100 to \$500. The amendment also clarifies that the notice is required only if a particular entity is requesting more than \$1,000 as compensation or reimbursement of expenses. If several professionals are requesting compensation or reimbursement, and only one hearing will be held on all applications, notice under paragraph (a)(6) is required only with respect to the entities that have requested more than \$1,000. If each applicant requests \$1,000 or less, notice under paragraph (a)(6) is not required even though the aggregate amount of all applications to be considered at the hearing is more than \$1,000.

If a particular entity has filed prior applications or had received compensation or reimbursement of expenses at an earlier time in the case, the amounts previously requested or awarded are not considered when determining whether the present application exceeds \$1,000 for the purpose of applying this rule.

*GAP Report on Rule 2002(a).* No changes since publication.

#### **COMMITTEE NOTES ON RULES—2001 AMENDMENT**

*Subdivision (c)(3)* is added to assure that parties given notice of a hearing to consider confirmation of a plan under subdivision (b) are given adequate notice of an injunction provided for in the plan if it would enjoin conduct that is not otherwise enjoined by operation of the Code. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

The notice requirement of subdivision (c)(3) is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against acts to collect a discharged debt from the debtor, Rule 2002(c)(3) would not apply because that conduct would be enjoined under §524(a)(2) upon the debtor's discharge. But if a plan provides that creditors will be enjoined from asserting claims

against persons who are not debtors in the case, the notice of the confirmation hearing must include the information required under Rule 2002(c)(3) because that conduct would not be enjoined by operation of the Code. See §524(e).

The requirement that the notice identify the entities that would be subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the notice may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient for the notice to identify the entities as "all creditors of the debtor" and for the notice to be published in a manner that satisfies due process requirements.

*Subdivision (g)* has been revised to clarify that where a creditor or indenture trustee files both a proof of claim which includes a mailing address and a separate request designating a mailing address, the last paper filed determines the proper address. The amendments also clarify that a request designating a mailing address is effective only with respect to a particular case.

Under Rule 2002(g), a duly filed proof of claim is considered a request designating a mailing address if a notice of no dividend has been given under Rule 2002(h), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(3). A duly filed proof of interest is considered a request designating a mailing address of an equity security holder.

Rule 2002(g)(3) is added to assure that notices to an infant or incompetent person under this rule are mailed to the appropriate guardian or other legal representative. Under Rule 1007(m), if the debtor knows that a creditor is an infant or incompetent person, the debtor is required to include in the list and schedule of creditors the name and address of the person upon whom process would be served in an adversary proceeding in accordance with Rule 7004(b)(2). If the infant or incompetent person, or another person, files a request or proof of claim designating a different name and mailing address, the notices would have to be mailed to both names and addresses until the court resolved the issues as to the proper mailing address.

The other amendments to Rule 2002(g) are stylistic.

*Changes Made After Publication and Comments.* In Rule 2002(c)(3), the word "highlighted" was replaced with "underlined" because highlighted documents are difficult to scan electronically for inclusion in the clerk's files. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of any injunction provided for in a plan are substantive matters beyond the scope of the rules.

In Rule 2002(g), no changes were made.

#### **COMMITTEE NOTES ON RULES—2003 AMENDMENT**

Subdivision (a)(1) of the rule is amended to direct the clerk or other person giving notice of the §341 or §1104(b) meeting of creditors to include the debtor's full social security number on the notice. Official Form 9, the form of the notice of the meeting of creditors that will become a part of the court's file in the case, will include only the last four digits of the debtor's social security number. This rule, however, directs the clerk to include the full social security number on the notice that is served on the creditors and other identified parties, unless the court orders otherwise in a particular case. This will enable creditors and other parties in interest who are in possession of the debtor's social security number to verify the debtor's identity and proceed accordingly. The filed Official Form 9, however, will not include the debtor's full social security number. This will prevent the full social security number from becoming a part of the court's file in the case, and the number will not be included in the court's electronic records. Creditors who already have the debtor's social security number will be able to verify the existence of a case under the debtor's

social security number, but any person searching the electronic case files without the number will not be able to acquire the debtor's social security number.

*Changes Made After Publication and Comments.* The rule amendment was made in response to concerns of both private creditors and taxing authorities that truncating the social security number of a debtor to the last four digits would unduly hamper their ability to identify the debtor and govern their actions accordingly. Therefore, the Advisory Committee amended Rule 2002 to require the clerk to include the debtor's full social security number on the notice informing creditors of the §341 meeting and other significant deadlines in the case. This is essentially a continuation of the practice under the current rules, and the amendment is necessary because of the amendment to Rule 1005 that restricts publication of the social security number on the caption of the petition to the final four digits of the number.

#### **COMMITTEE NOTES ON RULES—2004 AMENDMENT**

The rule is amended to reflect that the structure of the Internal Revenue Service no longer includes a District Director. Thus, rather than sending notice to the District Director, the rule now requires that the notices be sent to the location designated by the Service and set out in the register of addresses maintained by the clerk under Rule 5003(e). The other change is stylistic.

#### **COMMITTEE NOTES ON RULES—2005 AMENDMENT**

A new paragraph (g)(4) is inserted in the rule. The new paragraph authorizes an entity and a notice provider to agree that the notice provider will give notices to the entity at the address or addresses set out in their agreement. Rule 9001(9) sets out the definition of a notice provider.

The business of many entities is national in scope, and technology currently exists to direct the transmission of notice (both electronically and in paper form) to those entities in an accurate and much more efficient manner than by sending individual notices to the same creditor by separate mailings. The rule authorizes an entity and a notice provider to determine the manner of the service as well as to set the address or addresses to which the notices must be sent. For example, they could agree that all notices sent by the notice provider to the entity must be sent to a single, nationwide electronic or postal address. They could also establish local or regional addresses to which notices would be sent in matters pending in specific districts. Since the entity and notice provider also can agree on the date of the commencement of service under the agreement, there is no need to set a date in the rule after which notices would have to be sent to the address or addresses that the entity establishes. Furthermore, since the entity supplies the address to the notice provider, use of that address is conclusively presumed to be proper. Nonetheless, if that address is not used, the notice still may be effective if the notice is otherwise effective under applicable law. This is the same treatment given under Rule 5003(e) to notices sent to governmental units at addresses other than those set out in that register of addresses.

The remaining subdivisions of Rule 2002(g) continue to govern the addressing of a notice that is not sent pursuant to an agreement described in Rule 2002(g)(4).

*Changes Made After Publication and Comment.* No changes since publication.

#### **COMMITTEE NOTES ON RULES—2008 AMENDMENT**

Subdivision (b) is amended to provide for 25 days' notice of the time for the court to make a final determination whether the plan in a small business case can serve as a disclosure statement. Conditional approval of a disclosure statement in a small business case is governed by Rule 3017.1 and does not require 25 days' notice. The court may consider this matter in a hearing combined with the confirmation hearing in a small business case.

Because of the requirements of Rule 6004(g), subdivision (c)(1) is amended to require that a trustee leasing or selling personally identifiable information under §363(b)(1)(A) or (B) of the Code, as amended in 2005, include in the notice of the lease or sale transaction a statement as to whether the lease or sale is consistent with a policy prohibiting the transfer of the information.

Subdivisions (f)(9) and (10) are new. They reflect the 2005 amendments to §§342(d) and 704(b) of the Code. Section 342(d) requires the clerk to give notice to creditors shortly after the commencement of the case as to whether a presumption of abuse exists. Subdivision (f)(9) adds this notice to the list of notices that the clerk must give. Subdivision (f)(10) implements the amendment to §704(b), which requires the court to provide a copy to all creditors of a statement by the United States trustee or bankruptcy administrator as to whether the debtor's case would be presumed to be an abuse under §707(b) not later than five days after receiving it.

Subdivision (f)(11) is also added to provide notice to creditors of the debtor's filing of a statement in a chapter 11, 12, or 13 case that there is no reasonable cause to believe that §522(q) applies in the case. This allows a creditor who disputes that assertion to request a delay of the entry of the discharge in the case.

Subdivision (g)(2) of the rule is amended because the 2005 amendments to §342(f) of the Code permit creditors in chapter 7 and 13 individual debtor cases to file a notice with any bankruptcy court of the address to which the creditor wishes all notices to be sent. The amendment to Rule 2002(g)(2) therefore only limits application of the subdivision when a creditor files a notice under §342(f).

New subdivision (g)(5) implements §342(g)(1) which was added to the Code in 2005. Section 342(g)(1) allows a creditor to treat a notice as not having been brought to the creditor's attention, and so potentially ineffective, until it is received by a person or organizational subdivision that the creditor has designated to receive notices under the Bankruptcy Code. Under that section, the creditor must have established reasonable procedures for such notices to be delivered to the designated person or subdivision. The rule provides that, in order to challenge a notice under §342(g)(1), a creditor must have filed the name and address of the designated notice recipient, as well as a description of the procedures for directing notices to that recipient, prior to the time that the challenged notice was issued. The filing required by the rule may be made as part of a creditor's filing under §342(f) which allows a creditor to file a notice of the address to be used by all bankruptcy courts or particular bankruptcy courts to provide notice to the creditor in cases under chapters 7 and 13. Filing the name and address of the designated notice recipient and the procedures for directing notices to that recipient will reduce uncertainty as to the proper party for receiving notice and limit factual disputes as to whether a notice recipient has been designated and as to the nature of procedures adopted to direct notices to the recipient.

Subdivision (k) is amended to add notices given under subdivision (q) to the list of notices which must be served on the United States trustee.

Section 1514(d) of the Code, added by the 2005 amendments, requires that such additional time as is reasonable under the circumstances be given to creditors with foreign addresses with respect to notices and the filing of a proof of claim. Thus, subdivision (p)(1) is added to this rule to give the court flexibility to direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses. If cause exists, such as likely delays in the delivery of mailed notices in particular locations, the court may order that notice also be given by email, facsimile, or private courier. Alternatively, the court may enlarge the notice period for a creditor with a foreign address. It is expected that in most situations involving foreign creditors, fairness will not require any additional notice or extension of the notice period. This rule recognizes that the court has discretion to establish procedures to determine, on its own initiative,



whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest.

Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days' notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court may also shorten the additional notice time if circumstances so warrant. For example, if the court in a chapter 11 case determines that supplementing the notice to a foreign creditor with notice by electronic means, such as email or facsimile, would give the creditor reasonable notice, the court may order that the creditor be given only 20 days' notice in accordance with Rule 2002(a)(7).

Subdivision (p)(3) is added to provide that the court may, for cause, override a creditor's designation of a foreign address under Rule 2002(g). For example, if a party in interest believes that a creditor has wrongfully designated a foreign address to obtain additional time when it has a significant presence in the United States, the party can ask the court to order that notices to that creditor be sent to an address other than the one designated by the foreign creditor.

Subdivision (q) is added to require that notice of the hearing on the petition for recognition of a foreign proceeding be given to the debtor, all administrators in foreign proceedings of the debtor, entities against whom provisional relief is sought, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice of the court's intention to communicate with a foreign court or foreign representative.

*Changes Made After Publication.* Subdivision (g)(2) was amended to provide that the designated address of a governmental entity under Rule 5003(e) establishes an exception to the rule that a creditor's address is to be taken from the debtor's schedules. The fifth and sixth paragraphs of the Committee Note were amended to explain that change.

Subdivision (p)(3) was added to the rule to provide that the court may override a creditor's designation of a foreign mailing address under Rule 2002(g). This will permit a party in interest to seek court relief if a creditor has improperly designated a foreign address.

Subdivision (q)(1) and (2) were amended by adopting language from §101(24) to identify foreign representatives as "all persons or bodies authorized to administer foreign proceedings of the debtor" rather than as "all administrators in foreign proceedings of the debtor." References to Rule 5012 in subdivision (q)(2) and in the Committee Note were deleted.

#### **COMMITTEE NOTES ON RULES—2009 AMENDMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods

- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

#### **COMMITTEE NOTES ON RULES—2016 AMENDMENT**

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.

#### **COMMITTEE NOTES ON RULES—2017 AMENDMENT**

Subdivisions (a) and (b) are amended and reorganized to alter provisions governing notice under this rule in chapter 13 cases. Subdivision (a)(9) is added to require at least 21 days' notice of the time for filing objections to confirmation of a chapter 13 plan. Subdivision (b)(3) is added to provide separately for 28 days' notice of the date of the confirmation hearing in a chapter 13 case. These amendments conform to amended Rule 3015, which governs the time for presenting objections to confirmation of a chapter 13 plan. Other changes are stylistic.

#### **REFERENCES IN TEXT**

The Securities Investor Protection Act, referred to in subd. (k), probably means the Securities Investor Protection Act of 1970, Pub. L. 91-503, Dec. 23, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2021 (§78aaaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaaa of Title 15 and Tables.

#### **AMENDMENT BY PUBLIC LAW**

**1984**—Subd. (n). Pub. L. 98-353 added subd. (n).

**1983**—Subd. (f). Pub. L. 98-91 inserted ", or some other person as the Court may direct," after "clerk".

#### **EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

#### **EFFECTIVE DATE OF 1983 AMENDMENT**

Section 1 of Pub. L. 98-91 provided: "That rule 2002(f) of the Bankruptcy Rules, as proposed by the United States Supreme Court in the order of April 25, 1983, of the Court, shall take effect on August 1, 1983, except as otherwise provided in section 2 [amending subd. (f) of this rule and enacting a provision set out as a note below]."

Section 2(b) of Pub. L. 98-91 provided that: "The amendment made by subsection (a) [amending subd. (f) of this rule] shall take effect on August 1, 1983."

<sup>1</sup> So in original. Period probably should not appear.

## **Rule 2003. Meeting of Creditors or Equity Security Holders**

(a) **Date and Place.** Except as otherwise provided in §341(e) of the Code, in a chapter 7 liquidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 40 days after the order for relief. In a chapter 12 family farmer debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 35 days after the order for relief. In a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 50 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.

### **(b) Order of Meeting.**

(1) **Meeting of Creditors.** The United States trustee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a creditors' committee and, if the case is not under subchapter V of chapter 7, the election of a trustee. The presiding officer shall have the authority to administer oaths.

(2) **Meeting of Equity Security Holders.** If the United States trustee convenes a meeting of equity security holders pursuant to §341(b) of the Code, the United States trustee shall fix a date for the meeting and shall preside.

(3) **Right To Vote.** In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to §501(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. A creditor of a partnership may file a proof of claim or writing evidencing a right to vote for the trustee for the estate of the general partner notwithstanding that a trustee for the partnership has previously qualified. In the event of an objection to the amount of allowability of a claim for the purpose of voting, unless the court orders otherwise, the United States trustee shall tabulate the votes for each alternative presented by the dispute and, if resolution of such dispute is necessary to determine the result of the election, the tabulations for each alternative shall be reported to the court.

(c) **Record of Meeting.** Any examination under oath at the meeting of creditors held pursuant to §341(a) of the Code shall be recorded verbatim by the United States trustee using electronic sound recording equipment or other means of recording, and such record shall be preserved by the United States trustee and available for public access until two years after the conclusion of the meeting of creditors. Upon request of any entity, the United States trustee shall certify and provide a copy or transcript of such recording at the entity's expense.

### **(d) Report of Election and Resolution of Disputes in a Chapter 7 Case.**

(1) **Report of Undisputed Election.** In a chapter 7 case, if the election of a trustee or a member of a creditors' committee is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the person or entity elected and a statement that the election is undisputed.

(2) **Disputed Election.** If the election is disputed, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by

the dispute. No later than the date on which the report is filed, the United States trustee shall mail a copy of the report to any party in interest that has made a request to receive a copy of the report. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. Unless a motion for the resolution of the dispute is filed no later than 14 days after the United States trustee files a report of a disputed election for trustee, the interim trustee shall serve as trustee in the case.

**(e) Adjournment.** The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time. The presiding official shall promptly file a statement specifying the date and time to which the meeting is adjourned.

**(f) Special Meetings.** The United States trustee may call a special meeting of creditors on request of a party in interest or on the United States trustee's own initiative.

**(g) Final Meeting.** If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed \$1,500, the clerk shall mail a summary of the trustee's final account to the creditors with a notice of the meeting, together with a statement of the amount of the claims allowed. The trustee shall attend the final meeting and shall, if requested, report on the administration of the estate.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 26, 1999, eff. Dec. 1, 1999; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 26, 2011, eff. Dec. 1, 2011.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—198**

Section 341(a) of the Code requires a meeting of creditors in a chapter 7, 11 or 13 case, and §341(b) permits the court to order a meeting of equity security holders. A major change from prior law, however, prohibits the judge from attending or presiding over the meeting. Section 341(c).

This rule does not apply either in a case for the reorganization of a railroad or for the adjustment of debts of a municipality. Sections 116 and 90 render §§341 and 343 inapplicable in these types of cases. Section 341 sets the requirement for a meeting of creditors and §343 provides for the examination of the debtor.

**Subdivision (a).** The meeting is to be held between 20 and 40 days after the date of the order for relief. In a voluntary case, the date of the order for relief is the date of the filing of the petition (§301 of the Code); in an involuntary case, it is the date of an actual order (§303(i) of the Code).

**Subdivision (b)** provides flexibility as to who will preside at the meeting of creditors. The court may designate a person to serve as presiding officer, such as the interim trustee appointed under §701 of the Code. If the court does not designate anyone, the clerk will preside. In either case, creditors may elect a person of their own choosing. In any event, the clerk may remain to record the proceedings and take appearances. Use of the clerk is not contrary to the legislative policy of §341(c). The judge remains insulated from any information coming forth at the meeting and any information obtained by the clerk must not be relayed to the judge.

Although the clerk may preside at the meeting, the clerk is not performing any kind of judicial role, nor should the clerk give any semblance of performing such a role. It would be pretentious for the clerk to ascend the bench, don a robe or be addressed as "your honor". The clerk should not appear to parties or others as any type of judicial officer.

In a chapter 11 case, if a committee of unsecured creditors has been appointed pursuant to §1102(a)(1) of the Code and a chairman has been selected, the chairman will preside or a person, such as the attorney for the committee, may be designated to preside by the chairman.

Since the judge must fix the bond of the trustee but cannot be present at the meeting, the rule allows the creditors to recommend the amount of the bond. They should be able to obtain relevant information concerning the extent of assets of the debtor at the meeting.

Paragraph (1) authorizes the presiding officer to administer oaths. This is important because the debtor's examination must be under oath.

Paragraph (3) of subdivision (b) has application only in a chapter 7 case. That is the only type of case under the Code that permits election of a trustee or committee. In all other cases, no vote is taken at the meeting of creditors. If it is necessary for the court to make a determination with respect to a claim, the meeting may be adjourned until the objection or dispute is resolved.

The second sentence recognizes that partnership creditors may vote for a trustee of a partner's estate along with the separate creditors of the partner. Although §723(c) gives the trustee of a partnership a claim against a partner's estate for the full amount of partnership creditors' claims allowed, the purpose and function of this provision are to simplify distribution and prevent double proof, not to disfranchise partnership creditors in electing a trustee of an estate against which they hold allowable claims.

*Subdivision (c)* requires minutes and a record of the meeting to be maintained by the presiding officer. A verbatim record must be made of the debtor's examination but the rule is flexible as to the means used to record the examination.

*Subdivision (d)* recognizes that the court must be informed immediately about the election or nonelection of a trustee in a chapter 7 case. Pursuant to Rule 2008, the clerk officially informs the trustee of his election or appointment and how he is to qualify. The presiding person has no authority to resolve a disputed election.

For purposes of expediency, the results of the election should be obtained for each alternative presented by the dispute and immediately reported to the court. Thus, when an interested party presents the dispute to the court, its prompt resolution by the court will determine the dispute and a new or adjourned meeting to conduct the election may be avoided. The clerk is not an interested party.

A creditors' committee may be elected only in a chapter 7 case. In chapter 11 cases, a creditors' committee is appointed pursuant to §1102.

While a final meeting is not required, Rule 2002(f)(10) provides for the trustee's final account to be sent to creditors.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

*Subdivision (a).* Many courts schedule meetings of creditors at various locations in the district. Because the clerk must schedule meetings at those locations, an additional 20 days for scheduling the meetings is provided under the amended rule.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

The amendment to subdivision (a) relating to the calling of the meeting of creditors in a chapter 12 case is consistent with the expedited procedures of chapter 12. Subdivision (a) is also amended to clarify that the United States trustee does not call a meeting of creditors in a chapter 9 case. Pursuant to §901(a) of the Code, §341 is inapplicable in chapter 9 cases. The other amendments to subdivisions (a), (b)(1), and (b)(2) and the additions of subdivisions (f) and (g) are derived from Rule X-1006 and conform to the 1986 amendments to §341 of the Code. The second sentence of subdivision (b)(3) is amended because Rule 2009(e) is abrogated. Although

the United States trustee fixes the date for the meeting, the clerk of the bankruptcy court transmits the notice of the meeting unless the court orders otherwise, as prescribed in Rule 2002(a)(1).

Pursuant to §702 and §705 of the Code, creditors may elect a trustee and a committee in a chapter 7 case. Subdivision (b) of this rule provides that the United States trustee shall preside over any election that is held under those sections. The deletion of the last sentence of subdivision (b)(1) does not preclude creditors from recommending to the United States trustee the amount of the trustee's bond when a trustee is elected. Trustees and committees are not elected in chapter 11, 12, and 13 cases.

If an election is disputed, the United States trustee shall not resolve the dispute. For purposes of expediency, the United States trustee shall tabulate the results of the election for each alternative presented by the dispute. However, if the court finds that such tabulation is not feasible under the circumstances, the United States trustee need not tabulate the votes. If such tabulation is feasible and if the disputed vote or votes would affect the result of the election, the tabulations of votes for each alternative presented by the dispute shall be reported to the court. If a motion is made for resolution of the dispute in accordance with subdivision (d) of this rule, the court will determine the issue and another meeting to conduct the election may not be necessary.

*Subdivisions (f) and (g)* are derived from Rule X-1006(d) and (e), except that the amount is increased to \$1,500 to conform to the amendment to Rule 2002(f).

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT**

*Subdivision (a)* is amended to extend by ten days the time for holding the meeting of creditors in a chapter 13 case. This extension will provide more flexibility for scheduling the meeting of creditors. Other amendments are stylistic and make no substantive change.

#### **COMMITTEE NOTES ON RULES—1999 AMENDMENT**

*Subdivision (d)* is amended to require the United States trustee to mail a copy of a report of a disputed election to any party in interest that has requested a copy of it. Also, if the election is for a trustee, the rule as amended will give a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute.

The substitution of "United States trustee" for "presiding officer" is stylistic. Section 341(a) of the Code provides that the United States trustee shall preside at the meeting of creditors. Other amendments are designed to conform to the style of Rule 2007.1(b)(3) regarding the election of a trustee in a chapter 11 case.

*GAP Report on Rule 2003.* No changes since publication.

#### **COMMITTEE NOTES ON RULES—2003 AMENDMENT**

The rule is amended to reflect the enactment of subchapter V of chapter 7 of the Code governing multilateral clearing organization liquidations. Section 782 of the Code provides that the designation of a trustee or alternative trustee for the case is made by the Federal Reserve Board. Therefore, the meeting of creditors in those cases cannot include the election of a trustee.

*Changes Made After Publication and Comments.* No changes since publication.

#### **COMMITTEE NOTES ON RULES—2008 AMENDMENT**

If the debtor has solicited acceptances to a plan before commencement of the case, §341(e), which was added to the Code by the 2005 amendments, authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be

convened. The rule is amended to recognize that a meeting of creditors might not be held in those cases.

*Changes Made After Publication.* No changes were made after publication.

#### **COMMITTEE NOTES ON RULES—2009 AMENDMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

#### **COMMITTEE NOTES ON RULES—2011 AMENDMENT**

*Subdivision (e).* Subdivision (e) is amended to require the presiding official to file a statement after the adjournment of a meeting of creditors or equity security holders designating the period of the adjournment. The presiding official is the United States trustee or the United States trustee's designee. This requirement will provide notice to parties in interest not present at the initial meeting of the date and time to which the meeting has been continued. An adjourned meeting is "held open" as permitted by §1308(b)(1) of the Code. The filing of this statement will also discourage premature motions to dismiss or convert the case under §1307(e).

*Changes Made After Publication.* No changes were made to the language of the rule following publication. The Committee Note was revised to state more explicitly that adjournment of a meeting of creditors to a specific date constitutes holding it open for purposes of §1308(b) of the Bankruptcy Code.

#### **Rule 2004. Examination**

**(a) Examination on Motion.** On motion of any party in interest, the court may order the examination of any entity.

**(b) Scope of Examination.** The examination of an entity under this rule or of the debtor under §343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

**(c) Compelling Attendance and Production of Documents.** The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is

to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

(d) Time and Place of Examination of Debtor. The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) Mileage. An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 2002, eff. Dec. 1, 2002.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

*Subdivision (a)* of this rule is derived from former Bankruptcy Rule 205(a). See generally 2 Collier, *Bankruptcy* 343.02, 343.08, 343.13 (15th ed. 1981). It specifies the manner of moving for an examination. The motion may be heard *ex parte* or it may be heard on notice.

*Subdivision (b)* is derived from former Bankruptcy Rules 205(d) and 11–26.

*Subdivision (c)* specifies the mode of compelling attendance of a witness or party for an examination and for the production of evidence under this rule. The subdivision is substantially declaratory of the practice that had developed under §21a of the Act. See 2 Collier, *supra* 343.11.

This subdivision will be applicable for the most part to the examination of a person other than the debtor. The debtor is required to appear at the meeting of creditors for examination. The word "person" includes the debtor and this subdivision may be used if necessary to obtain the debtor's attendance for examination.

*Subdivision (d)* is derived from former Bankruptcy Rule 205(f) and is not a limitation on subdivision (c). Any person, including the debtor, served with a subpoena within the range of a subpoena must attend for examination pursuant to subdivision (c). Subdivision (d) applies only to the debtor and a subpoena need not be issued. There are no territorial limits on the service of an order on the debtor. See, e.g., *In re Totem Lodge & Country Club, Inc.*, 134 F. Supp. 158 (S.D.N.Y. 1955).

*Subdivision (e)* is derived from former Bankruptcy Rule 205(g). The lawful mileage and fee for attendance at a United States court as a witness are prescribed by 28 U.S.C. §1821.

*Definition of debtor.* The word "debtor" as used in this rule includes the persons specified in the definition in Rule 9001(5).

*Spousal privilege.* The limitation on the spousal privilege formerly contained in §21a of the Act is not carried over in the Code. For privileges generally, see Rule 501 of the Federal Rules of Evidence made applicable in cases under the Code by Rule 1101 thereof.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

This rule is amended to allow the examination in a chapter 12 case to cover the same matters that may be covered in an examination in a chapter 11 or 13 case.

#### **COMMITTEE NOTES ON RULES—2002 AMENDMENT**



*Subdivision (c)* is amended to clarify that an examination ordered under Rule 2004(a) may be held outside the district in which the case is pending if the subpoena is issued by the court for the district in which the examination is to be held and is served in the manner provided in Rule 45 F. R. Civ. P., made applicable by Rule 9016.

The subdivision is amended further to clarify that, in addition to the procedures for the issuance of a subpoena set forth in Rule 45 F. R. Civ. P., an attorney may issue and sign a subpoena on behalf of the court for the district in which a Rule 2004 examination is to be held if the attorney is authorized to practice, even if admitted pro hac vice, either in the court in which the case is pending or in the court for the district in which the examination is to be held. This provision supplements the procedures for the issuance of a subpoena set forth in Rule 45(a)(3)(A) and (B) F. R. Civ. P. and is consistent with one of the purposes of the 1991 amendments to Rule 45, to ease the burdens of interdistrict law practice.

*Changes Made After Publication and Comments.* The typographical error was corrected, but no other changes were made.

## **Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination**

(a) Order To Compel Attendance for Examination. On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.

(b) Removal. Whenever any order to bring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may be taken into custody under the order and removed in accordance with the following rules:

(1) If the debtor is taken into custody under the order at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order.

(2) If the debtor is taken into custody under the order at a place 100 miles or more from the place of issue of the order, the debtor shall be brought without unnecessary delay before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the magistrate judge, bankruptcy judge, or district judge finds that an order has issued under this rule and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate judge, bankruptcy judge, or district judge shall order removal, and the person in custody shall be released on conditions ensuring prompt appearance before the court that issued the order to compel the attendance.

(c) Conditions of Release. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18, U.S.C., §3146(a) and (b).

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993.)

This rule is derived from former Bankruptcy Rule 206. The rule requires the debtor to be examined as soon as possible if allegations of the movant for compulsory examination under this rule are found to be true after a hearing. Subdivision (b) includes in paragraphs (1) and (2) provisions adapted from subdivisions (a) and (b) of Rule 40 of the Federal Rules of Criminal Procedure, which governs the handling of a person arrested in one district on a warrant issued in another. Subdivision (c) incorporates by reference the features of subdivisions (a) and (b) of 18 U.S.C. §3146, which prescribe standards, procedures and factors to be considered in determining conditions of release of accused persons in noncapital cases prior to trial. The word "debtor" as used in this rule includes the persons named in Rule 9001(5).

The affidavit required to be submitted in support of the motion may be subscribed by the unsworn declaration provided for in 28 U.S.C. §1746.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT**

*Subdivision (b)(2)* is amended to conform to §321 of the Judicial Improvements Act of 1990, Pub. L. No. 101–650, which changed the title of "United States magistrate" to "United States magistrate judge." Other amendments are stylistic and make no substantive change.

### **Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases**

**(a)** Applicability. This rule applies only in a liquidation case pending under chapter 7 of the Code.

**(b)** Definitions.

**(1) Proxy.** A proxy is a written power of attorney authorizing any entity to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of the estate.

**(2) Solicitation of Proxy.** The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the debtor.

**(c) Authorized Solicitation.**

**(1)** A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee elected pursuant to §705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under §702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over \$500 or the 100 creditors having the largest claims had at least seven days' notice in writing and of which meeting written minutes were kept and are available reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition.

**(2)** A proxy may be solicited only in writing.

**(d) Solicitation Not Authorized.** This rule does not permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any custodian; (3) by the interim trustee or by or on behalf of any entity not qualified to vote under §702(a) of the Code; (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.

**(e) Data Required From Holders of Multiple Proxies.** At any time before the voting commences at any meeting of creditors pursuant to §341(a) of the Code, or at any other time as the court may direct, a holder of two or more proxies shall file and transmit to the United States trustee a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including:

**(1)** a copy of the solicitation;

**(2)** identification of the solicitor, the forwarder, if the forwarder is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other. If the solicitor, forwarder, or proxyholder is an association, there shall also be included a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. If the solicitor, forwarder, or proxyholder is a committee of creditors, the statement shall also set forth the date and place the committee was organized, that the committee was organized in accordance with clause (B) or (C) of paragraph (c)(1) of this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority;

**(3)** a statement that no consideration has been paid or promised by the proxyholder for the proxy;

**(4)** a statement as to whether there is any agreement, and, if so, the particulars thereof, between the proxyholder and any other entity for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any entity, other than a member or regular associate of the proxyholder's law firm, which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

**(5)** if the proxy was solicited by an entity other than the proxyholder, or forwarded to the holder by an entity who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised for the proxy, and whether there is any agreement, and, if so, the particulars thereof, between the solicitor or forwarder and any other entity for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any entity other than a member or regular associate of the solicitor's or forwarder's law firm which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

**(6)** if the solicitor, forwarder or proxyholder is a committee, a statement signed and verified by each member as to the amount and source of any consideration paid or to be paid to such member in connection with the case other than by way of dividend on the member's claim.

**(f) Enforcement of Restrictions on Solicitation.** On motion of any party in interest or on its own initiative, the court may determine whether there has been a failure to comply with the provisions of this rule or any other impropriety in connection with the solicitation or voting of a proxy. After notice and a hearing the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other appropriate action.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

This rule is a comprehensive regulation of solicitation and voting of proxies in liquidation cases. It is derived from former Bankruptcy Rule 208. The rule applies only in chapter 7 cases because no voting occurs, other than on a plan, in a chapter 11 case. Former Bankruptcy Rule 208 did not apply to solicitations of acceptances of plans.

## PART III—CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

### Rule 3001. Proof of Claim

(a) **Form and Content.** A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) **Who May Execute.** A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) **Supporting Information.**

(1) *Claim Based on a Writing.* Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) *Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply.* In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

(i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

(3) *Claim Based on an Open-End or Revolving Consumer Credit Agreement.*

(A) When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor's real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

(i) the name of the entity from whom the creditor purchased the account;

(ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;

(iii) the date of an account holder's last transaction;

(iv) the date of the last payment on the account; and

(v) the date on which the account was charged to profit and loss.

(B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.

**(d) Evidence of Perfection of Security Interest.** If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

**(e) Transferred Claim.**

**(1) *Transfer of Claim Other Than for Security Before Proof Filed.*** If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

**(2) *Transfer of Claim Other than for Security after Proof Filed.*** If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

**(3) *Transfer of Claim for Security Before Proof Filed.*** If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

**(4) *Transfer of Claim for Security after Proof Filed.*** If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

**(5) *Service of Objection or Motion; Notice of Hearing.*** A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing.

**(f) Evidentiary Effect.** A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

**(g)** <sup>1</sup> To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

(As amended Pub. L. 98–353, title III, §354, July 10, 1984, 98 Stat. 361; Apr. 30, 1991, eff. Aug. 1, 1991; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 23, 2012, eff. Dec. 1, 2012.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rules 301 and 302. The Federal Rules of Evidence, made applicable to cases under the Code by Rule 1101, do not prescribe the evidentiary effect to be accorded particular documents. Subdivision (f) of this rule supplements the Federal Rules of Evidence as they apply to cases under the Code.

*Subdivision (c).* This subdivision is similar to former Bankruptcy Rule 302(c) and continues the requirement for the filing of any written security agreement and provides that the filing of a duplicate of a writing underlying a claim authenticates the claim with the same effect as the filing of the original writing. *Cf.* Rules 1001(4) and 1003 of F.R. of Evid. Subdivision (d) together with the requirement in the first sentence of subdivision (c) for the filing of any written security agreement, is designed to facilitate the determination whether the claim is secured and properly perfected so as to be valid against the trustee.

*Subdivision (d).* "Satisfactory evidence" of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in possession of the secured party since a specified date, or a statement of the reasons why no action was necessary for perfection. The secured creditor may not be required to file a proof of claim under this rule if he is not seeking allowance of a claim for a deficiency. But see §506(d) of the Code.

*Subdivision (e).* The rule recognizes the differences between an unconditional transfer of a claim and a transfer for the purpose of security and prescribes a procedure for dealing with the rights of the transferor and transferee when the transfer is for security. The rule clarifies the procedure to be followed when a transfer precedes or follows the filing of the petition. The interests of sound administration are served by requiring the post-petition transferee to file with the proof of claim a statement of the transferor acknowledging the transfer and the consideration for the transfer. Such a disclosure will assist the court in dealing with evils that may arise out of post-bankruptcy traffic in claims against an estate. *Monroe v. Scofield*, 135 F.2d 725 (10th Cir. 1943); *In re Philadelphia Western Ry.*, 64 F. Supp. 738 (E.D. Pa. 1946); *cf. In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939). Both paragraphs (1) and (3) of this subdivision, which deal with a transfer before the filing of a proof of claim, recognize that the transferee may be unable to obtain the required statement from the transferor, but in that event a sound reason for such inability must accompany the proof of claim filed by the transferee.

Paragraphs (3) and (4) clarify the status of a claim transferred for the purpose of security. An assignee for security has been recognized as a rightful claimant in bankruptcy. *Feder v. John Engelhorn & Sons*, 202 F.2d 411 (2d Cir. 1953). An assignor's right to file a claim notwithstanding the assignment was sustained in *In re R & L Engineering Co.*, 182 F. Supp. 317 (S.D. Cal. 1960). Facilitation of the filing of proofs by both claimants as holders of interests in a single claim is consonant with equitable treatment of the parties and sound administration. See *In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939).

Paragraphs (2) and (4) of subdivision (e) deal with the transfer of a claim after proof has been filed. Evidence of the terms of the transfer required to be disclosed to the court will facilitate the court's determination of the appropriate order to be entered because of the transfer.

Paragraph (5) describes the procedure to be followed when an objection is made by the transferor to the transferee's filed evidence of transfer.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987**

*Subdivision (g)* was added by §354 of the 1984 amendments.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

*Subdivision (a)* is amended in anticipation of future revision and renumbering of the Official Forms.

*Subdivision (e)* is amended to limit the court's role to the adjudication of disputes regarding transfers of claims. If a claim has been transferred prior to the filing of a proof of claim, there is no need to state the consideration for the transfer or to submit other evidence of the transfer. If a claim has been transferred other than for security after a proof of claim has been filed, the transferee is substituted for the transferor in the absence of a timely objection by the alleged transferor. In that event, the clerk should note the transfer without the need for court approval. If a timely objection is filed, the court's role is to determine whether a transfer has been made that is enforceable under nonbankruptcy law. This rule is not intended either to encourage or discourage postpetition transfers of claims or to affect any remedies otherwise available under nonbankruptcy law to a transferor or transferee such as for misrepresentation in connection with the transfer of a claim. "After notice and a hearing" as used in subdivision (e) shall be construed in accordance with paragraph (5).

The words "with the clerk" in subdivision (e)(2) and (e)(3) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

#### **COMMITTEE NOTES ON RULES—2000 AMENDMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 21-day periods
- 20-day periods become 28-day periods
- 25-day periods become 35-day periods

#### **COMMITTEE NOTES ON RULES—2011 AMENDMENT**

*Subdivision (c)*. Subdivision (c) is amended to prescribe with greater specificity the supporting information required to accompany certain proofs of claim and, in cases in which the debtor is an individual, the consequences of failing to provide the required information.

Existing subdivision (c) is redesignated as (c)(1).

Subdivision (c)(2) is added to require additional information to accompany proofs of claim filed in cases in which the debtor is an individual. When the holder of a claim seeks to recover—in addition to the principal amount of a debt—interest, fees, expenses, or other charges, the proof of claim must be accompanied by a statement itemizing these additional amounts with sufficient specificity to make clear the basis for the claimed amount.

If a claim is secured by a security interest in the property of the debtor and the debtor defaulted on the claim prior to the filing of the petition, the proof of claim must be accompanied by a statement of the amount required to cure the prepetition default.

If the claim is secured by a security interest in the debtor's principal residence, the proof of claim must be accompanied by the attachment prescribed by the appropriate Official Form. In that attachment, the holder of the claim must provide the information required by subparagraphs (A) and (B) of this paragraph (2). In addition, if an escrow account has been established in connection with the claim, an escrow account statement showing the account balance, and any amount owed, as of the date the petition was filed must be submitted in accordance with subparagraph (C). The statement must be prepared in a form consistent with the requirements of nonbankruptcy law. See, e.g., 12 U.S.C. §2601 *et seq.* (Real Estate Settlement Procedure Act). Thus the holder of the claim may provide the escrow account statement using the same form it uses outside of bankruptcy for this purpose.

Subparagraph (D) of subdivision (c)(2) sets forth sanctions that the court may impose on a creditor in an individual debtor case that fails to provide information required by subdivision (c). Failure to provide the required information does not itself constitute ground for disallowance of a claim. See §502(b) of the Code. But when an objection to the allowance of a claim is made or other litigation arises concerning the status or treatment of a claim, if the holder of that claim has not complied with the requirements of this subdivision, the court may preclude it from presenting as evidence any of the omitted information, unless the failure to comply with this subdivision was substantially justified or harmless. The court retains discretion to allow an amendment to a proof of claim under appropriate circumstances or to impose a sanction different from or in addition to the preclusion of the introduction of evidence.

#### *Changes Made After Publication.*

*Subdivision (c)(1).* The requirement that the last account statement sent to the debtor be filed with the proof of claim was deleted.

*Subdivision (c)(2).* In subparagraph (A), the provision was added requiring the use of the appropriate Official Form for the attachment filed by a holder of a claim secured by a security interest in a debtor's principal residence.

In subdivision (c)(2)(D), the clause "the holder shall be precluded" was deleted, and the provision was revised to state that the court may, after notice and hearing, take either or both" of the specified actions.

*Committee Note.* In the discussion of subdivision (c)(2), the term "security interest" was added to the sentence that discusses the required filing of a statement of the amount necessary to cure a prepetition default.

The discussion of subdivision (c)(2)(D) was expanded to clarify that failure to provide required documentation, by itself, is not a ground for disallowance of a claim and that the court has several options in responding to a creditor's failure to provide information required by subdivision (c).

*Other changes.* Stylistic changes were made to the rule and the Committee Note.

#### **COMMITTEE NOTES ON RULES—2012 AMENDMENT**

*Subdivision (c).* Subdivision (c) is amended in several respects. The former requirement in paragraph (1) to file an original or duplicate of a supporting document is amended to reflect the current practice of filing only copies. The proof of claim form instructs claimants not to file the original of a document because it may be destroyed by the clerk's office after scanning.



Subdivision (c) is further amended to add paragraph (3). Except with respect to claims secured by a security interest in the debtor's real property (such as a home equity line of credit), paragraph (3) specifies information that must be provided in support of a claim based on an open-end or revolving consumer credit agreement (such as an agreement underlying the issuance of a credit card). Because a claim of this type may have been sold one or more times prior to the debtor's bankruptcy, the debtor may not recognize the name of the person filing the proof of claim. Disclosure of the information required by paragraph (3) will assist the debtor in associating the claim with a known account. It will also provide a basis for assessing the timeliness of the claim. The date, if any, on which the account was charged to profit and loss ("charge-off" date) under subparagraph (A)(v) should be determined in accordance with applicable standards for the classification and account management of consumer credit. A proof of claim executed and filed in accordance with subparagraph (A), as well as the applicable provisions of subdivisions (a), (b), (c)(2), and (e), constitutes prima facie evidence of the validity and amount of the claim under subdivision (f).

To the extent that paragraph (3) applies to a claim, paragraph (1) of subdivision (c) is not applicable. A party in interest, however, may obtain the writing on which an open-end or revolving consumer credit claim is based by requesting in writing that documentation from the holder of the claim. The holder of the claim must provide the documentation within 30 days after the request is sent. The court, for cause, may extend or reduce that time period under Rule 9006.

#### *Changes Made After Publication.*

*Subdivision (c)(1).* The requirement for the attachment of a writing on which a claim is based was changed to require that a copy, rather than the original or a duplicate, of the writing be provided.

*Subdivision (c)(3).* An exception to subparagraph (A) was added for open-end or revolving consumer credit agreements that are secured by the debtor's real property.

A time limit of 30 days for responding to a written request under subparagraph (B) was added.

*Committee Note.* A statement was added to clarify that if a proof of claim complies with subdivision (c)(3)(A), as well as with subdivisions (a), (b), (c)(2), and (e), it constitutes prima facie evidence of the validity and amount of the claim under subdivision (f).

*Other changes.* Stylistic changes were also made to the rule.

#### **REFERENCES IN TEXT**

The United States Warehouse Act, referred to in subd. (g), is Part C of act Aug. 11, 1916, ch. 313, 39 Stat. 486, as amended, which is classified generally to chapter 10 (§241 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 241 of Title 7 and Tables.

#### **AMENDMENT BY PUBLIC LAW**

**1984**—Subd. (g). Pub. L. 98–353 added subd. (g).

#### **EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

<sup>1</sup> So in original. Subsec. (g) adopted without a catchline.

## Rule 3002. Filing Proof of Claim or Interest

(a) **Necessity for Filing.** A secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.

(b) **Place of Filing.** A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) **Time for Filing.** In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. But in all these cases, the following exceptions apply:

(1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under §1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under §1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return. The court may, for cause, enlarge the time for a governmental unit to file a proof of claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from the entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such longer time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.

(6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that:

(A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or

(B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address.

(7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if:

(A) the proof of claim, together with the attachments required by Rule 3001(c)(2)(C), is filed not later than 70 days after the order for relief is entered; and

(B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 23, 2008, eff. Dec. 1, 2008; Apr. 27, 2017, eff. Dec. 1, 2017.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

*Subdivision (a)* of this rule is substantially a restatement of the general requirement that claims be proved and filed. The exceptions refer to Rule 3003 providing for the filing of claims in chapter 9 and 11 cases, and to Rules 3004 and 3005 authorizing claims to be filed by the debtor or trustee and the filing of a claim by a contingent creditor of the debtor.

A secured claim need not be filed or allowed under §502 or §506(d) unless a party in interest has requested a determination and allowance or disallowance under §502.

*Subdivision (c)* is adapted from former Bankruptcy Rule 302(e) but changes the time limits on the filing of claims in chapter 7 and 13 cases from six months to 90 days after the first date set for the meeting of creditors. The special rule for early filing by a secured creditor in a chapter 13 case, in former Rule 13–302(e)(1) is not continued.

Although the claim of a secured creditor may have arisen before the petition, a judgment avoiding the security interest may not have been entered until after the time for filing claims has expired. Under Rule 3002(c)(3) the creditor who did not file a secured claim may nevertheless file an unsecured claim within the time prescribed. A judgment does not become final for the purpose of starting the 30 day period provided for by paragraph (3) until the time for appeal has expired or, if an appeal is taken, until the appeal has been disposed of. *In re Tapscott*, 41 F. Supp. 594 (W.D. Ky. 1945).

Paragraph (1) is derived from former Bankruptcy Rule 302(e). The governmental unit may move for an extension of the 90 day period. Pursuant to §501(c) of the Code, if the government does not file its claim within the proper time period, the debtor or trustee may file on its behalf. An extension is not needed by the debtor or trustee because the right to file does not arise until the government's time has expired.

Paragraph (4) is derived from former Bankruptcy Rule 3002(c)(3). (See, e.g., Rule 11–33(a)(2)(B)). In light of the reduced time it is necessary that a party with a claim arising from the rejection of an executory contract have sufficient time to file the claim. This clause allows the court to fix an appropriate time.

Paragraph (5) of subdivision (c) is correlated with the provision in Rule 2002(e) authorizing notification to creditors of estates from which no dividends are anticipated. The clause permits creditors who have refrained from filing claims after receiving notification to be given an opportunity to file when subsequent developments indicate the possibility of a dividend. The notice required by this clause must be given in the manner provided in Rule 2002. The information relating to the discovery of assets will usually be obtained by the clerk from the trustee's interim reports or special notification by the trustee.

Provision is made in Rule 2002(a) and (h) for notifying all creditors of the fixing of a time for filing claims against a surplus under paragraph (6). This paragraph does not deal with the distribution of the surplus. Reference must also be made to §726(a)(2)(C) and (3) which permits distribution on late filed claims.

Paragraph (6) is only operative in a chapter 7 case. In chapter 13 cases, the plan itself provides the distribution to creditors which is not necessarily dependent on the size of the estate.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

*Subdivision (a)* is amended by adding a reference to Rule 1019(4). Rule 1019(4) provides that claims actually filed by a creditor in a chapter 11 or 13 case shall be treated as filed in a superseding chapter 7 case. Claims deemed filed in a chapter 11 case pursuant to §1111(a) of

the Code are not considered as filed in a superseding chapter 7 case. The creditor must file a claim in the superseding chapter 7 case.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

*Subdivision (a)* is amended to conform to the renumbering of subdivisions of Rule 1019. Subdivision (c) is amended to include chapter 12 cases. Subdivision (c)(4) is amended to clarify that it includes a claim arising from the rejection of an unexpired lease.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1996 AMENDMENT**

The amendments are designed to conform to §§502(b)(9) and 726(a) of the Code as amended by the Bankruptcy Reform Act of 1994.

The Reform Act amended §726(a)(1) and added §502(b)(9) to the Code to govern the effects of a tardily filed claim. Under §502(b)(9), a tardily filed claim must be disallowed if an objection to the proof of claim is filed, except to the extent that a holder of a tardily filed claim is entitled to distribution under §726(a)(1), (2), or (3).

The phrase "in accordance with this rule" is deleted from Rule 3002(a) to clarify that the effect of filing a proof of claim after the expiration of the time prescribed in Rule 3002(c) is governed by §502(b)(9) of the Code, rather than by this rule.

Section 502(b)(9) of the Code provides that a claim of a governmental unit shall be timely filed if it is filed "before 180 days after the date of the order for relief or such later time as the Bankruptcy Rules provide. To avoid any confusion as to whether a governmental unit's proof of claim is timely filed under §502(b)(9) if it is filed on the 180th day after the order for relief, paragraph (1) of subdivision (c) provides that a governmental unit's claim is timely if it is filed not later than 180 days after the order for relief.

References to "the United States, a state, or subdivision thereof" in paragraph (1) of subdivision (c) are changed to "governmental unit" to avoid different treatment among foreign and domestic governments.

*GAP Report on Rule 3002.* After publication of the proposed amendments, the Bankruptcy Reform Act of 1994 amended sections 726 and 502(b) of the Code to clarify the rights of creditors who tardily file a proof of claim. In view of the Reform Act, proposed new subdivision (d) of Rule 3002 has been deleted from the proposed amendments because it is no longer necessary. In addition, subdivisions (a) and (c) have been changed after publication to clarify that the effect of tardily filing a proof of claim is governed by §502(b)(9) of the Code, rather than by this rule.

The amendments to §502(b) also provide that a governmental unit's proof of claim is timely filed if it is filed before 180 days after the order for relief. Proposed amendments to Rule 3002(c)(1) were added to the published amendments to conform to this statutory change and to avoid any confusion as to whether a claim by a governmental unit is timely if it is filed on the 180th day.

The committee note has been re-written to explain the rule changes designed to conform to the Reform Act.

#### **COMMITTEE NOTES ON RULES—2008 AMENDMENT**

Subdivision (c)(1) is amended to reflect the addition of §1308 to the Bankruptcy Code in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision (c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case. The amendment also allows the

governmental unit to move for additional time to file a proof of claim prior to expiration of the applicable filing period.

Subdivision (c)(5) of the rule is amended to set a new period for providing notice to creditors that they may file a proof of claim in a case in which they were previously informed that there was no need to file a claim. Under Rule 2002(e), if it appears that there will be no distribution to creditors, the creditors are notified of this fact and are informed that if assets are later discovered and a distribution is likely that a new notice will be given to the creditors. This second notice is prescribed by Rule 3002(c)(5). The rule is amended to direct the clerk to give at least 90 days' notice of the time within which creditors may file a proof of claim. Setting the deadline in this manner allows the notices being sent to creditors to be more accurate regarding the deadline than was possible under the prior rule. The rule previously began the 90 day notice period from the time of the mailing of the notice, a date that could vary and generally would not even be known to the creditor. Under the amended rule, the notice will identify a specific bar date for filing proofs of claim thereby being more helpful to the creditors.

Subdivision (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with §1514(d), added to the Code by the 2005 amendments, and requires that the rules and orders of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

Other changes are stylistic.

*Changes Made After Publication.* Subdivision (c)(1) was amended to allow governmental units to move for an enlargement of the time to file a proof of claim. The Committee Note was amended to describe this addition to the rule.

#### COMMITTEE NOTE ON RULES—2017 AMENDMENT

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with §506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. The revision of language from §506(d) is not intended to effect any change of law with respect to claims subject to setoff under §553. The amendment preserves the existing exceptions to this rule under Rules 1019(3), 3003, 3004, and 3005. Under Rule 1019(3), a creditor does not need to file another proof of claim after conversion of a case to chapter 7. Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. Rules 3004 and 3005 govern the filing of a proof of claim by the debtor, trustee, or another entity if a creditor does not do so in a timely manner.

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the §341 meeting of creditors to 70 days after the petition date. If a case is converted to chapter 12 or chapter 13, the 70-day time for filing runs from the order of conversion. If a case is converted to chapter 7, Rule 1019(2) provides that a new time period for filing a claim commences under Rule 3002. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Subdivision (c)(6) is amended to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides

that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by Rule 1007(a). The amendment also clarifies that if a court grants a creditor's motion under this rule to extend the time to file a proof of claim, the extension runs from the date of the court's decision on the motion.

Subdivision (c)(7) is added to provide a two-stage deadline for filing mortgage proofs of claim secured by an interest in the debtor's principal residence. Those proofs of claim must be filed with the appropriate Official Form mortgage attachment within 70 days of the order for relief. The claim will be timely if any additional documents evidencing the claim, as required by Rule 3001(c)(1) and (d), are filed within 120 days of the order for relief. The order for relief is the commencement of the case upon filing a petition, except in an involuntary case. See §301 and §303(h). The confirmation of a plan within the 120-day period set forth in subdivision (c)(7)(B) does not prohibit an objection to any proof of claim.

### **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.

**(b) Notice of Payment Changes; Objection.**

**(1) Notice.** The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest-rate or escrow-account adjustment, no later than 21 days before a payment in the new amount is due. If the claim arises from a home-equity line of credit, this requirement may be modified by court order.

**(2) Objection.** A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments in accordance with §1322(b)(5) of the Code. If no motion is filed by the day before the new amount is due, the change goes into effect, unless the court orders otherwise.

**(c) Notice of Fees, Expenses, and Charges.** The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

**(d) Form and Content.** A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).

**(e) Determination of Fees, Expenses, or Charges.** On motion of a party in interest filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with §1322(b)(5) of the Code.

**(f) Notice of Final Cure Payment.** Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan

payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

**(g) Response to Notice of Final Cure Payment.** Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with §1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

**(h) Determination of Final Cure and Payment.** On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

**(i) Failure to Notify.** If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

**(1)** preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

**(2)** award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

(Added Apr. 26, 2011, eff. Dec. 1, 2011; amended Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

#### COMMITTEE NOTES ON RULES—2011

This rule is new. It is added to aid in the implementation of §1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor's plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments.

In order to be able to fulfill the obligations of §1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage, see Rule 3001(c)(2), and the amount of the postpetition payment obligations. If the latter amount changes over time, due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if appropriate, and to adjust postpetition mortgage payments to cover any undisputed claimed adjustment. Compliance with the notice provision of the rule should also eliminate any concern on the part of the holder of the claim that informing a debtor of a change in postpetition payment obligations might violate the automatic stay.

**Subdivision (a).** Subdivision (a) specifies that this rule applies only in a chapter 13 case to claims secured by a security interest in the debtor's principal residence.

**Subdivision (b).** Subdivision (b) requires the holder of a claim to notify the debtor, debtor's counsel, and the trustee of any postpetition change in the mortgage payment amount at least 21 days before the new payment amount is due.

**Subdivision (c).** Subdivision (c) requires an itemized notice to be given, within 180 days of incurrence, of any postpetition fees, expenses, or charges that the holder of the claim asserts are

recoverable from the debtor or against the debtor's principal residence. This might include, for example, inspection fees, late charges, or attorney's fees.

*Subdivision (d).* Subdivision (d) provides the method of giving the notice under subdivisions (b) and (c). In both instances, the holder of the claim must give notice of the change as prescribed by the appropriate Official Form. In addition to serving the debtor, debtor's counsel, and the trustee, the holder of the claim must also file the notice on the claims register in the case as a supplement to its proof of claim. Rule 3001(f) does not apply to any notice given under subdivision (b) or (c), and therefore the notice will not constitute prima facie evidence of the validity and amount of the payment change or of the fee, expense, or charge.

*Subdivision (e).* Subdivision (e) permits the debtor or trustee, within a year after service of a notice under subdivision (c), to seek a determination by the court as to whether the fees, expenses, or charges set forth in the notice are required by the underlying agreement or applicable nonbankruptcy law to cure a default or maintain payments.

*Subdivision (f).* Subdivision (f) requires the trustee to issue a notice to the holder of the claim, the debtor, and the debtor's attorney within 30 days after completion of payments under the plan. The notice must (1) indicate that all amounts required to cure a default on a claim secured by the debtor's principal residence have been paid, and (2) direct the holder to comply with subdivision (g). If the trustee fails to file this notice within the required time, this subdivision also permits the debtor to file and serve the notice on the trustee and the holder of the claim.

*Subdivision (g).* Subdivision (g) governs the response of the holder of the claim to the trustee's or debtor's notice under subdivision (f). Within 21 days after service of notice of the final cure payment, the holder of the claim must file and serve a statement indicating whether the prepetition default has been fully cured and also whether the debtor is current on all payments in accordance with §1322(b)(5) of the Code. If the holder of the claim contends that all cure payments have not been made or that the debtor is not current on other payments required by §1322(b)(5), the response must itemize all amounts, other than regular future installment payments, that the holder contends are due.

*Subdivision (h).* Subdivision (h) provides a procedure for the judicial resolution of any disputes that may arise about payment of a claim secured by the debtor's principal residence. Within 21 days after the service of the statement under (g), the trustee or debtor may move for a determination by the court of whether any default has been cured and whether any other non-current obligations remain outstanding.

*Subdivision (i).* Subdivision (i) specifies sanctions that may be imposed if the holder of a claim fails to provide any of the information as required by subdivisions (b), (c), or (g).

If, after the chapter 13 debtor has completed payments under the plan and the case has been closed, the holder of a claim secured by the debtor's principal residence seeks to recover amounts that should have been but were not disclosed under this rule, the debtor may move to have the case reopened in order to seek sanctions against the holder of the claim under subdivision (i).

#### *Changes Made After Publication.*

*Subdivision (a).* As part of organizational changes intended to make the rule shorter and clearer, a new subdivision (a) was inserted that specifies the applicability of the rule. Other subdivision designations were changed accordingly.



*Subdivision (b).* The timing of the notice of payment change, addressed in subdivision (a) of the published rule, was changed from 30 to 21 days before payment must be made in the new amount.

*Subdivision (d).* The provisions of the published rule prescribing the procedure for providing notice of payment changes and of fees, expenses, and charges were moved to subdivision (d).

*Subdivision (e).* As part of the organizational revision of the rule, the provision governing the resolution of disputes over claimed fees, expenses, or charges was moved to this subdivision.

*Subdivision (f).* The triggering event for the filing of the notice of final cure payment was changed to the debtor's completion of all payments required under the plan. A sentence was added requiring the notice to inform the holder of the mortgage claim of its obligation to file and serve a response under subdivision (g).

*Subdivision (h).* The caption of this subdivision (which was subdivision (f) as published), was changed to describe its content more precisely.

*Subdivision (i).* The clause "the holder shall be precluded" was deleted, and the provision was revised to state that "the court may, after notice and hearing, take either or both" of the specified actions.

*Committee Note.* A sentence was added to the first paragraph to clarify that the rule applies regardless of whether ongoing mortgage payments are made directly by the debtor or disbursed through the chapter 13 trustee. Other changes were made to the Committee Note to reflect the changes made to the rule.

*Other changes.* Stylistic changes were made throughout the rule and Committee Note.

#### **COMMITTEE NOTES ON RULES—2016 AMENDMENT**

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 to a 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.

#### **COMMITTEE NOTES ON RULES—2018 AMENDMENT**

Subdivision (b) is subdivided and amended in two respects. First, it is amended in what is now subdivision (b)(1) to authorize courts to modify its requirements for claims arising from home equity lines of credit (HELOCs). Because payments on HELOCs may adjust frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping

the person who is maintaining payments on the loan apprised of the current payment amount. Courts may specify alternative requirements for providing notice of changes in HELOC payment amounts by local rules or orders in individual cases.

Second, what is now subdivision (b)(2) is amended to acknowledge the right of the trustee, debtor, or other party in interest, such as the United States trustee, to object to a change in a home-mortgage payment amount after receiving notice of the change under subdivision (b)(1). The amended rule does not set a deadline for filing a motion for a determination of the validity of the payment change, but it provides as a general matter—subject to a contrary court order—that if no motion has been filed on or before the day before the change is to take effect, the announced change goes into effect. If there is a later motion and a determination that the payment change was not required to maintain payments under §1322(b)(5), appropriate adjustments will have to be made to reflect any overpayments. If, however, a motion is made during the time specified in subdivision (b)(2), leading to a suspension of the payment change, a determination that the payment change was valid will require the debtor to cure the resulting default in order to be current on the mortgage at the end of the bankruptcy case.

Subdivision (e) is amended to allow parties in interest in addition to the debtor or trustee, such as the United States trustee, to seek a determination regarding the validity of any claimed fee, expense, or charge.

### **Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Case**

**(a) Applicability of Rule.** This rule applies in chapter 9 and 11 cases.

**(b) Schedule of Liabilities and List of Equity Security Holders.**

**(1) *Schedule of Liabilities.*** The schedule of liabilities filed pursuant to §521(l) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule.

**(2) *List of Equity Security Holders.*** The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.

**(c) Filing Proof of Claim or Interest.**

**(1) *Who May File.*** Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

**(2) *Who Must File.*** Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

**(3) *Time for Filing.*** The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6).

**(4) *Effect of Filing Claim or Interest.*** A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to §521(a)(1) of the Code.

**(5) *Filing by Indenture Trustee.*** An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

(d) Proof of Right to Record Status. For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. An objection to the statement may be filed by any party in interest.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 2008, eff. Dec. 1, 2008.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

*Subdivision (a).* This rule applies only in chapter 9 and chapter 11 cases. It is adapted from former Chapter X Rule 10–401 and provides an exception to the requirement for filing proofs of claim and interest as expressed in §§925 and 1111(a) of the Code.

*Subdivision (b).* This general statement implements §§925 and 1111(a) of the Code.

*Subdivision (c).* This subdivision permits, in paragraph (1), the filing of a proof of claim but does not make it mandatory. Paragraph (2) requires, as does the Code, filing when a claim is scheduled as disputed, contingent, or unliquidated as to amount. It is the creditor's responsibility to determine if the claim is accurately listed. Notice of the provision of this rule is provided for in Official Form No. 16, the order for the meeting of creditors. In an appropriate case the court may order creditors whose claims are scheduled as disputed, contingent, or unliquidated be notified of that fact but the procedure is left to the discretion of the court.

*Subdivision (d)* is derived from former Chapter X Rule 10–404.

Except with respect to the need and time for filing claims, all other aspects concerning claims covered by Rules 3001 and 3002 are applicable in chapter 9 and 11 cases.

Holders of equity security interests need not file proofs of interest. Voting and distribution participation is dependent on ownership as disclosed by the appropriate records of a transfer agent or the corporate or other business records at the time prescribed in Rules 3017 and 3021.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

Paragraph (3) of subdivision (c) is amended to permit the late filing of claims by infants or incompetent persons under the same circumstances that permit late filings in cases under chapter 7, 12, or 13. The amendment also provides sufficient time in which to file a claim that arises from a postpetition judgment against the claimant for the recovery of money or property or the avoidance of a lien. It also provides for purposes of clarification that upon rejection of an executory contract or unexpired lease, the court shall set a time for filing a claim arising therefrom despite prior expiration of the time set for filing proofs of claim.

The caption of paragraph (4) of subdivision (c) is amended to indicate that it applies to a proof of claim.

#### **COMMITTEE NOTES ON RULES—2008 AMENDMENT**

Subdivision (c)(3) is amended to implement §1514(d) of the Code, which was added by the 2005 amendments. It makes the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. This change was necessary so that creditors with foreign addresses be provided such additional time as is reasonable under the circumstances to file proofs of claims.

*Changes Made After Publication.* No changes were made after publication.

### **Rule 3004. Filing of Claims by Debtor or Trustee**

If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 25, 2005, eff. Dec. 1, 2005.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

This rule is adapted from former Bankruptcy Rule 303 but conforms with the changes made by §501(c) of the Code. Rule 303 permitted only the filing of tax and wage claims by the debtor. Section 501(c) of the Code, however, permits the filing by the debtor or trustee on behalf of any creditor.

It is the policy of the Code that debtors' estates should be administered for the benefit of creditors without regard to the dischargeability of their claims. After their estates have been closed, however, discharged debtors may find themselves saddled with liabilities, particularly for taxes, which remain unpaid because of the failure of creditors holding nondischargeable claims to file proofs of claim and receive distributions thereon. The result is that the debtor is deprived of an important benefit of the Code without any fault or omission on the debtor's part and without any objective of the Code being served thereby.

Section 501(c) of the Code authorizes a debtor or trustee to file a proof of claim for any holder of a claim. Although all claims may not be nondischargeable, it may be difficult to determine, in particular, whether tax claims survive discharge. See Plunk, *Federal Tax Liens and Priorities in Bankruptcy*, 43 Ref. J. 37, 43–44 (1969); 1 Collier, *Bankruptcy* ¶17.14 (14th ed. 1967); 3 *id.* 523.06 (15th ed. 1979). To eliminate the necessity of the resolution of this troublesome issue, the option accorded the debtor by the Code does not depend on the nondischargeability of the claim. No serious administrative problems and no unfairness to creditors seemed to develop from adoption of Rule 303, the forerunner to §501(c). The authority to file is conditioned on the creditor's failure to file the proof of claim on or before the first date set for the meeting of creditors, which is the date a claim must ordinarily be filed in order to be voted in a chapter 7 case. Notice to the creditor is provided to enable him to file a proof of claim pursuant to Rule 3002, which proof, when filed, would supersede the proof filed by the debtor or trustee. Notice to the trustee would serve to alert the trustee to the special character of the proof and the possible need for supplementary evidence of the validity and amount of the claim. If the trustee does not qualify until after a proof of claim is filed by the debtor pursuant to this rule, he should be notified as soon as practicable thereafter.

To the extent the claim is allowed and dividends paid thereon, it will be reduced or perhaps paid in full. If the claim is also filed pursuant to Rule 3005, only one distribution thereon may be made. As expressly required by Rule 3005 and by the purpose of this rule such distribution must diminish the claim.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

Under the rule as amended, the debtor or trustee in a chapter 7 or 13 case has 120 days from the first date set for the meeting of creditors to file a claim for the creditor. During the first 90 days of that period the creditor in a chapter 7 or 13 case may file a claim as provided by Rule 3002(c). If the creditor fails to file a claim, the debtor or trustee shall have an additional 30 days thereafter to file the claim. A proof of claim filed by a creditor supersedes a claim filed by the debtor or trustee only if it is timely filed within the 90 days allowed under Rule 3002(c).

#### **COMMITTEE NOTES ON RULES—2005 AMENDMENT**

The rule is amended to conform to §501(c) of the Code. Under that provision, the debtor or trustee may file proof of a claim if the creditor fails to do so in a timely fashion. The rule previously

authorized the debtor and the trustee to file a claim as early as the day after the first date set for the meeting of creditors under §341(a). Under the amended rule, the debtor and trustee must wait until the creditor's opportunity to file a claim has expired. Providing the debtor and the trustee with the opportunity to file a claim ensures that the claim will participate in any distribution in the case. This is particularly important for claims that are nondischargeable.

Since the debtor and trustee cannot file a proof of claim until after the creditor's time to file has expired, the rule no longer permits the creditor to file a proof of claim that will supersede the claim filed by the debtor or trustee. The rule leaves to the courts the issue of whether to permit subsequent amendment of such proof of claim.

Other changes are stylistic.

*Changes Made After Publication and Comment.* No changes were made after publication. The Advisory Committee concluded that Mr. Van Allsburg's suggestion goes beyond the scope of the published proposal. Consequently, the Committee declined to adopt the suggestion but may consider it in greater detail at a future meeting.

### **Rule 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor**

(a) Filing of Claim. If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), any entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or Rule 3003(c), whichever is applicable. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution.

(b) Filing of Acceptance or Rejection; Substitution of Creditor. An entity which has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in the entity's own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice prior to confirmation of a plan of the creditor's intention to act in the creditor's own behalf, the creditor shall be substituted for the obligor with respect to that claim.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 25, 2005, eff. Dec. 1, 2005.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

This rule is adapted from former Rules 304 and 10-402. Together with §501(b) of the Code, the rule makes clear that anyone who may be liable on a debt of the debtor, including a surety, guarantor, indorser, or other codebtor, is authorized to file in the name of the creditor of the debtor.

*Subdivision (a).* Rule 3002(c) provides the time period for filing proofs of claim in chapter 7 and 13 cases; Rule 3003(c) provides the time, when necessary, for filing claims in a chapter 9 or 11 case.

*Subdivision (b).* This subdivision applies in chapter 9 and 11 cases as distinguished from chapter 7 cases. It permits voting for or against a plan by an obligor who files a claim in place of the creditor.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

The words "with the court" in subdivision (b) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

## COMMITTEE NOTES ON RULES—2005 AMENDMENT

The rule is amended to delete the last sentence of subdivision (a). The sentence is unnecessary because if a creditor has filed a timely claim under Rule 3002 or 3003(c), the codebtor cannot file a proof of such claim. The codebtor, consistent with §501(b) of the Code, may file a proof of such claim only after the creditor's time to file has expired. Therefore, the rule no longer permits the creditor to file a superseding claim. The rule leaves to the courts the issue of whether to permit subsequent amendment of the proof of claim.

The amendment conforms the rule to §501(b) by deleting language providing that the codebtor files proof of the claim in the name of the creditor.

Other amendments are stylistic.

### *Changes Made After Publication and Comment:*

(a) The reference on line 2 of Rule 3005 to "Rule 3002 or 3003(c)" was changed to read "Rule 3002(c) or 3003(c)" to make it parallel to the language in Rule 3004.

(b) The phrase "file a proof of the claim" from line 7 of the proposed rule was moved up to line 4 of the proposed amendment immediately after the word "may." This makes the structure of Rules 3004 and 3005 more consistent.

## **Rule 3006. Withdrawal of Claim; Effect on Acceptance or Rejection of Plan**

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to §705(a) or appointed pursuant to §1102 of the Code. The order of the court shall be on such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.

(As amended Apr. 30, 1991; eff. Aug. 1, 1991.)

## NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Rules 305 and 10–404.

Since 1938 it has generally been held that Rule 41 F.R.Civ.P. governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F. Supp. 974, 976 (S.D.N.Y.), *aff'd sub nom. Kleid v. Ruthbell Coal Co.*, 131 F.2d 372, 373 (2d Cir. 1942); *Kelso v. MacLaren*, 122 F.2d 867, 870 (8th Cir. 1941); *In re Hills*, 35 F. Supp. 532, 533 (W.D. Wash. 1940). Accordingly, the cited cases held that after an objection has been filed a proof of claim may be withdrawn only subject to approval by the court. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See 3 Collier *Bankruptcy*, 57.12 (14th ed. 1961); Note, 20 Bost. U. L. Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding but the filing of an objection to the claim initiates a contest that must be disposed of by the court. This rule recognizes the applicability of the considerations underlying Rule 41(a) F.R.Civ.P. to the withdrawal of a claim after it has been put in issue by an objection. Rule 41(a)(2) F.R.Civ.P. requires leave of court to obtain dismissal over the objection of a defendant who has pleaded a counterclaim prior to the

service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway v. Union Bank of Switzerland*, 204 F.2d 603, 608 (2d Cir. 1953), *Kleid v. Ruthbell Coal Co.*, *supra*, *Kelso v. MacLaren*, *supra*, and *In re Hills*, *supra*, this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw proof of claim on the ground of estoppel or election of remedies. 2 Remington, *Bankruptcy* 186 (Henderson ed. 1956); *cf.* 3 Collier, *supra* 57.12, at 201 (1964). Voting a claim for a trustee was an important factor in the denial of a request to withdraw in *Standard Varnish Works v. Haydock*, 143 Fed. 318, 319–20 (6th Cir. 1906), and *In re Cann*, 47 F.2d 661, 662 (W.D. Pa. 1931). And it has frequently been recognized that a creditor should not be allowed to withdraw a claim after accepting a dividend. *In re Friedmann*, 1 Am. B. R. 510, 512 (Ref., S.D.N.Y. 1899); 3 Collier 205 (1964); *cf.* *In re O'Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir.), cert. denied, 271 U.S. 683 (1926). It was held in *Industrial Credit Co. v. Hazen*, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant had participated in the first meeting of creditors and in the examination of witnesses, the creditor was entitled under Rule 41(a)(1) F.R.Civ.P. to withdraw the claim of right by filing a notice of withdrawal before the trustee filed an objection under §57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the inference drawn in the *Hazen* case that Rule 41(a) F.R.Civ.P. supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive the creditor of the right to withdraw the claim, a creditor who has accepted a dividend or who has voted in the election of a trustee or otherwise participated actively in proceedings in a case should be permitted to withdraw only with the approval of the court on terms it deems appropriate after notice to the trustee. 3 Collier 205–06 (1964).

#### NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

This amendment is stylistic. Notice of the hearing need not be given to committees of equity security holders appointed pursuant to §1102 or committees of retired employees appointed pursuant to §1114 of the Code.

### Rule 3007. Objections to Claims

#### (a) Time and Manner of Service.

(1) *Time of Service.* An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing.

#### (2) *Manner of Service.*

(A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and

(i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or

(ii) if the objection is to a claim of an insured depository institution, in the manner provided by Rule 7004(h).

(B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.

(b) Demand for Relief Requiring an Adversary Proceeding. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

(c) Limitation on Joinder of Claims Objections. Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.

(d) Omnibus Objection. Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because:

(1) they duplicate other claims;

(2) they have been filed in the wrong case;

(3) they have been amended by subsequently filed proofs of claim;

(4) they were not timely filed;

(5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;

(6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance;

(7) they are interests, rather than claims; or

(8) they assert priority in an amount that exceeds the maximum amount under §507 of the Code.

(e) Requirements for Omnibus Objection. An omnibus objection shall:

(1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection;

(2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claim;

(3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds;

(4) state in the title the identity of the objector and the grounds for the objections;

(5) be numbered consecutively with other omnibus objections filed by the same objector; and

(6) contain objections to no more than 100 claims.

(f) Finality of Objection. The finality of any order regarding a claim objection included in an omnibus objection shall be determined as though the claim had been subject to an individual objection.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 27, 2017, eff. Dec. 1, 2017.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from §47a(8) of the Act and former Bankruptcy Rule 306. It prescribes the manner in which an objection to a claim shall be made and notice of the hearing thereon given to the claimant. The requirement of a writing does not apply to an objection to the allowance of a claim for the purpose of voting for a trustee or creditors' committee in a chapter 7 case. See Rule 2003.

The contested matter initiated by an objection to a claim is governed by rule 9014, unless a counterclaim by the trustee is joined with the objection to the claim. The filing of a counterclaim ordinarily commences an adversary proceeding subject to the rules in Part VII.



While the debtor's other creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to a recognition that the right to object is generally exercised by the trustee. Pursuant to §502(a) of the Code, however, any party in interest may object to a claim. But under §704 the trustee, if any purpose would be served thereby, has the duty to examine proofs of claim and object to improper claims.

By virtue of the automatic allowance of a claim not objected to, a dividend may be paid on a claim which may thereafter be disallowed on objection made pursuant to this rule. The amount of the dividend paid before the disallowance in such event would be recoverable by the trustee in an adversary proceeding.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

The words "with the court" are deleted as unnecessary. See Rules 5005(a) and 9001(3).

#### **COMMITTEE NOTES ON RULES—2007 AMENDMENT**

The rule is amended in a number of ways. First, the amendment prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. A party in interest may, however, include an objection to the allowance of a claim in an adversary proceeding. Unlike a contested matter, an adversary proceeding requires the service of a summons and complaint, which puts the defendant on notice of the potential for an affirmative recovery. Permitting the plaintiff in the adversary proceeding to include an objection to a claim would not unfairly surprise the defendant as might be the case if the action were brought as a contested matter that included an action to obtain relief of the kind specified in Rule 7001.

The rule as amended does not require that a party include an objection to the allowance of a claim in an adversary proceeding. If a claim objection is filed separately from a related adversary proceeding, the court may consolidate the objection with the adversary proceeding under Rule 7042.

The rule also is amended to authorize the filing of a pleading that joins objections to more than one claim. Such filings present an important opportunity for the efficient administration of large cases, but the rule includes restrictions on the use of these omnibus objections to ensure the protection of the due process rights of the claimants.

Unless the court orders otherwise, objections to more than one claim may be joined in a single pleading only if all of the claims were filed by the same entity, or if the objections are based solely on the grounds set out in subdivision (d) of the rule. Objections of the type listed in subdivision (d) often can be resolved without material factual or legal disputes. Objections to multiple claims permitted under the rule must comply with the procedural requirements set forth in subdivision (e). Among those requirements is the requirement in subdivision (e)(5) that these omnibus objections be consecutively numbered. Since these objections may not join more than 100 objections in any one omnibus objection, there may be a need for several omnibus objections to be filed in a particular case. Consecutive numbering of each omnibus objection and the identification of the objector in the title of the objection is essential to keep track of the objections on the court's docket. For example, the objections could be titled Debtor in Possession's First Omnibus Objection to Claims, Debtor in Possession's Second Omnibus Objection to Claims, Creditors' Committee's First Omnibus Objection to Claims, and so on. Titling the objections in this manner should avoid confusion and aid in tracking the objections on the docket.

Subdivision (f) provides that an order resolving an objection to any particular claim is treated, for purposes of finality, as if the claim had been the subject of an individual objection. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other joined objections. The rule permits the joinder of objections for convenience, and that

convenience should not impede timely review of a court's decision with respect to each claim. Whether the court's action as to a particular objection is final, and the consequences of that finality, are not addressed by this amendment. Moreover, use of an omnibus objection generally does not preclude the objecting party from raising a subsequent objection to the claim on other grounds. See Restatement (Second) of Judgments §26(1)(d) (1982) (generally applicable rule barring multiple actions based on same transaction or series of transactions is overridden when a statutory scheme permits splitting of claims).

*Changes Made After Publication.* There were several changes made to the rule after its publication. The Advisory Committee declined to follow Mr. Sabino's suggestion, concluding that the rule as proposed includes sufficient flexibility, and that expanding the flexibility might lead to excessive deviation from the appropriate format for omnibus claims objections. The Advisory Committee also declined to follow Mr. Horsley's suggestion because the deadline for filing a proof of claim varies based on the nature of the creditor (governmental units have different deadlines from other creditors) as well as on the chapter under which the case is pending. The Advisory Committee rejected Judge Grant's suggestion that a party proposing an omnibus claims objection be required to demonstrate some special cause to allow the joinder of the objections. The Advisory Committee concluded that the rule includes sufficient provisions for claimants such that omnibus objections should be allowed without the need for special showing by the claims objector that joinder is proper.

The Advisory Committee did accept several of Judge Grant's suggestions, and the rule was amended by deleting the grounds for objection to claims based on the filing of a superceding proof of claim under proposed subdivision (d)(3) and the transfer of claims under proposed subdivision (d)(4). Subdivision (d)(3) now permits objections to claims that have been amended by a subsequently filed proof of claim and the paragraphs within subdivision (d) have been renumbered to reflect the deletion. The Committee also no longer includes any reliance on §502(j) for the statement indicating that a subsequent claim objection can be filed to a claim that was previously included in an omnibus claim objection.

#### **COMMITTEE REVISION RULES—2017 AMENDMENT**

Subdivision (a) is amended to specify the manner in which an objection to a claim and notice of the objection must be served. It clarifies that Rule 7004 does not apply to the service of most claim objections. Instead, a claimant must be served by first-class mail addressed to the person whom the claimant most recently designated on its proof of claim to receive notices, at the address so indicated. If, however, the claimant is the United States, an officer or agency of the United States, or an insured depository institution, service must also be made according to the method prescribed by the appropriate provision of Rule 7004. The service methods for the depository institutions are statutorily mandated, and the size and dispersal of the decision-making and litigation authority of the federal government necessitate service on the appropriate United States attorney's office and the Attorney General, as well as the person designated on the proof of claim.

As amended, subdivision (a) no longer requires that a hearing be scheduled or held on every objection. The rule requires the objecting party to provide notice and an opportunity for a hearing on the objection, but, by deleting from the subdivision references to "the hearing," it permits local practices that require a claimant to timely request a hearing or file a response in order to obtain a hearing. The official notice form served with a copy of the objection will inform the claimant of any actions it must take. However, while a local rule may require the claimant to respond to the objection to a proof of claim, the court will still need to determine if the claim is valid, even if the claimant does not file a response to a claim objection or request a hearing.

## PART IV—THE DEBTOR: DUTIES AND BENEFITS

### Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

(a) Relief From Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property.

(1) *Motion.* A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to §363(e) shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to §705 or appointed pursuant to §1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to §1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.

(2) *Ex Parte Relief.* Relief from a stay under §362(a) or a request to prohibit or condition the use, sale, or lease of property pursuant to §363(e) may be granted without prior notice only if (A) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or the attorney for the adverse party can be heard in opposition, and (B) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required. The party obtaining relief under this subdivision and §362(f) or §363(e) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such adverse party or parties a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move for reinstatement of the stay or reconsideration of the order prohibiting or conditioning the use, sale, or lease of property. In that event, the court shall proceed expeditiously to hear and determine the motion.

(3) *Stay of Order.* An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stay pending until the expiration of 14 days after the entry of the order, unless the court orders otherwise.

(b) Use of Cash Collateral.

(1) *Motion; Service.*

(A) *Motion.* A motion for authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order.

(B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions, including:

- (i) the name of each entity with an interest in the cash collateral;
- (ii) the purposes for the use of the cash collateral;
- (iii) the material terms, including duration, of the use of the cash collateral; and
- (iv) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected.

(C) *Service.* The motion shall be served on: (1) any entity with an interest in the cash collateral; (2) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter

11 reorganization case and no committee of unsecured creditors has been appointed under §1102, the creditors included on the list filed under Rule 1007(d); and (3) any other entity that the court directs.

**(2) Hearing.** The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**(3) Notice.** Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.

**(c) Obtaining Credit.**

**(1) Motion; Service.**

**(A) Motion.** A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order.

**(B) Contents.** The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or form of order includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2). In addition, the motion shall describe the nature and extent of each provision listed below:

- (i)** a grant of priority or a lien on property of the estate under §364(c) or (d);
- (ii)** the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim for the use of property of the estate or credit obtained under §364 to make cash payments on account of the claim;
- (iii)** a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim;
- (iv)** a waiver or modification of Code provisions or applicable rules relating to the automatic stay;
- (v)** a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under §363(c), or request authority to obtain credit under §364;
- (vi)** the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order;
- (vii)** a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;
- (viii)** a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;
- (ix)** the indemnification of any entity;
- (x)** a release, waiver, or limitation of any right under §506(c); or
- (xi)** the granting of a lien on any claim or cause of action arising under §§544,<sup>1</sup> 545, 547, 548, 549, 553(b), 723(a), or 724(a).

**(C) Service.** The motion shall be served on: (1) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under §1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity that the court directs.

**(2) Hearing.** The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**(3) Notice.** Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.

**(4) Inapplicability in a Chapter 13 Case.** This subdivision (c) does not apply in a chapter 13 case.

**(d) Agreement Relating to Relief From the Automatic Stay, Prohibiting or Conditioning the Use, Sale, or Lease of Property, Providing Adequate Protection, Use of Cash Collateral, and Obtaining Credit.**

**(1) Motion; Service.**

**(A) Motion.** A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

- (i) an agreement to provide adequate protection;
- (ii) an agreement to prohibit or condition the use, sale, or lease of property;
- (iii) an agreement to modify or terminate the stay provided for in §362;
- (iv) an agreement to use cash collateral; or
- (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property.

**(B) Contents.** The motion shall consist of (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement. In addition, the concise statement shall briefly list or summarize, and identify the specific location of, each provision in the proposed form of order, agreement, or other document of the type listed in subdivision (c)(1)(B). The motion shall also describe the nature and extent of each such provision.

**(C) Service.** The motion shall be served on: (1) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under §1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs.

**(2) Objection.** Notice of the motion and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) of this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 14 days of the mailing of the notice.

**(3) Disposition; Hearing.** If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.

**(4) Agreement in Settlement of Motion.** The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 25, 2019, eff. Dec. 1, 2019.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

This rule implements §362 of the Code which set forth provisions regarding the automatic stay that arises on the filing of a petition. That section and this rule are applicable in chapters 7, 9, 11 and 13 cases. It also implements §363(c)(2) concerning use of cash collateral.

*Subdivision (a)* transforms with respect to the automatic stay what was an adversary proceeding under the former rules to motion practice. The Code provides automatic stays in several sections, e.g., §§362(a), 1301(a), and in §362(d) provides some grounds for relief from the stay. This rule specifies that the pleading seeking relief is by means of a motion. Thus the time period in Rule 7012 to answer a complaint would not be applicable and shorter periods may be fixed. Section 362(e) requires the preliminary hearing to be concluded within 30 days of its inception, rendering ordinary complaint and answer practice inappropriate.

This subdivision also makes clear that a motion under rule 9011 is the proper procedure for a debtor to seek court permission to use cash collateral. See §363(c)(2). Pursuant to Rule 5005, the motion should be filed in the court in which the case is pending. The court or local rule may specify the persons to be served with the motion for relief from the stay; see Rule 9013.

*Subdivision (b)* of the rule fills a procedural void left by §362. Pursuant to §362(e), the automatic stay is terminated 30 days after a motion for relief is made unless the court continues the stay as a result of a final hearing or, pending final hearing, after a preliminary hearing. If a preliminary hearing is held, §362(e) requires the final hearing to be commenced within 30 days after the preliminary hearing. Although the expressed legislative intent is to require expeditious resolution of a secured party's motion for relief, §362 is silent as to the time within which the final hearing must be concluded. *Subdivision (b)* imposes a 30 day deadline on the court to resolve the dispute.

At the final hearing, the stay is to be terminated, modified, annulled, or conditioned for cause, which includes, *inter alia*, lack of adequate protection; §362(d). The burden of proving adequate protection is on the party opposing relief from the stay; §362(g)(2). Adequate protection is exemplified in §361.

*Subdivision (c)* implements §362(f) which permits ex parte relief from the stay when there will be irreparable damage. This subdivision sets forth the procedure to be followed when relief is sought under §362(f). It is derived from former Bankruptcy Rule 601(d).

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

The scope of this rule is expanded and the former subdivisions (a), (b) and (c) are now combined in subdivision (a). The new subdivision (a)(2) is amended to conform to the 1984 amendments to §362(e) of the Code.

*Subdivision (b)* deals explicitly with the procedures which follow after a motion to use cash collateral is made and served. Filing shall be pursuant to Rule 5005. Service of the motion may be made by any method authorized by Rule 7004 and, if service is by mail, service is complete on mailing. Rule 9006(e). Under subdivision (b)(2), the court may commence a final hearing on

the motion within 15 days of service. Rule 9006(f) does not extend this 15 day period when service of the motion is by mail because the party served is not required to act within the 15 day period. In addition to service of the motion, notice of the hearing must be given. Rule 9007 authorizes the court to direct the form and manner of giving notice that is appropriate to the circumstances.

Section 363(c)(3) authorizes the court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the trustee will prevail at a final hearing." Subdivision (b)(2) of the rule permits a preliminary hearing to be held earlier than 15 days after service. Any order authorizing the use of cash collateral shall be limited to the amount necessary to protect the estate until a final hearing is held.

The objective of subdivision (b) is to accommodate both the immediate need of the debtor and the interest of the secured creditor in the cash collateral. The time for holding the final hearing may be enlarged beyond the 15 days prescribed when required by the circumstances.

The motion for authority to use cash collateral shall include (1) the amount of cash collateral sought to be used; (2) the name and address of each entity having an interest in the cash collateral; (3) the name and address of the entity in control or having possession of the cash collateral; (4) the facts demonstrating the need to use the cash collateral; and (5) the nature of the protection to be provided those having an interest in the cash collateral. If a preliminary hearing is requested, the motion shall also include the amount of cash collateral sought to be used pending final hearing and the protection to be provided.

Notice of the preliminary and final hearings may be combined. This rule does not limit the authority of the court under §363(c)(2)(B) and §102(e).

*Subdivision (c)* is new. The service, hearing, and notice requirements are similar to those imposed by subdivision (b). The motion to obtain credit shall include the amount and type of the credit to be extended, the name and address of the lender, the terms of the agreement, the need to obtain the credit, and the efforts made to obtain credit from other sources. If the motion is to obtain credit pursuant to §364(c) or (d), the motion shall describe the collateral, if any, and the protection for any existing interest in the collateral which may be affected by the proposed agreement.

*Subdivision (d)* is new. In the event the 15 day period for filing objections to the approval of an agreement of the parties described in this subdivision is too long, the parties either may move for a reduction of the period under Rule 9006(c)(1) or proceed under subdivision (b) or (c), if applicable. Rule 9006(c)(1) requires that cause be shown for the reduction of the period in which to object. In applying this criterion the court may consider the option of proceeding under subdivision (b) or (c) and grant a preliminary hearing and relief pending final hearing.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

*Subdivision (a)* is expanded to include a request to prohibit or condition the use, sale, or lease of property as is necessary to provide adequate protection of a property interest pursuant to §363(e) of the Code.

Notice of the motion for relief from the automatic stay or to prohibit or condition the use, sale, or lease of property must be served on the entities entitled to receive notice of a motion to approve an agreement pursuant to subdivision (d). If the movant and the adverse party agree to settle the motion and the terms of the agreement do not materially differ from the terms set forth in the movant's motion papers, the court may approve the agreement without further notice pursuant to subdivision (d)(4).

*Subdivision (a)(2)* is deleted as unnecessary because of §362(e) of the Code.

*Subdivisions (b)(1), (c)(1), and (d)(1)* are amended to require service on committees that are elected in chapter 7 cases. Service on committees of retired employees appointed under §1114 of the Code is not required. These subdivisions are amended further to clarify that, in the absence of a creditors' committee, service on the creditors included on the list filed pursuant to Rule 1007(d) is required only in chapter 9 and chapter 11 cases. The other amendments to subdivision (d)(1) are for consistency of style and are not substantive.

*Subdivision (d)(4)* is added to avoid the necessity of further notice and delay for the approval of an agreement in settlement of a motion for relief from an automatic stay, to prohibit or condition the use, sale, or lease of property, for use of cash collateral, or for authority to obtain credit if the entities entitled to notice have already received sufficient notice of the scope of the proposed agreement in the motion papers and have had an opportunity to be heard. For example, if a trustee makes a motion to use cash collateral and proposes in the original motion papers to provide adequate protection of the interest of the secured party by granting a lien on certain equipment, and the secured creditor subsequently agrees to terms that are within the scope of those proposed in the motion, the court may enter an order approving the agreement without further notice if the entities that received the original motion papers have had a reasonable opportunity to object to the granting of the motion to use cash collateral.

If the motion papers served under subdivision (a), (b), or (c) do not afford notice sufficient to inform the recipients of the material provisions of the proposed agreement and opportunity for a hearing, approval of the settlement agreement may not be obtained unless the procedural requirements of subdivision (d)(1), (d)(2), and (d)(3) are satisfied. If the 15 day period for filing objections to the approval of the settlement agreement is too long under the particular circumstances of the case, the court may shorten the time for cause under Rule 9006(c)(1).

#### **COMMITTEE NOTES ON RULES—1999 AMENDMENT**

*Paragraph (a)(3)* is added to provide sufficient time for a party to request a stay pending appeal of an order granting relief from an automatic stay before the order is enforced or implemented. The stay under paragraph (a)(3) is not applicable to orders granted ex parte in accordance with Rule 4001(a)(2).

The stay of the order does not affect the time for filing a notice of appeal in accordance with Rule 8002. While the enforcement and implementation of an order granting relief from the automatic stay is temporarily stayed under paragraph (a)(3), the automatic stay continues to protect the debtor, and the prevailing party may not foreclose on collateral or take any other steps that would violate the automatic stay.

The court may, in its discretion, order that Rule 4001(a)(3) is not applicable so that the prevailing party may immediately enforce and implement the order granting relief from the automatic stay. Alternatively, the court may order that the stay under Rule 4001(a)(3) is for a fixed period less than 10 days.

*GAP Report on Rule 4001.* No changes since publication.

#### **COMMITTEE NOTES ON RULES—2007 AMENDMENT**

The rule is amended to require that parties seeking authority to use cash collateral, to obtain credit, and to obtain approval of agreements to provide adequate protection, modify or terminate the stay, or to grant a senior or equal lien on property, submit with those requests a proposed order granting the relief, and that they provide more extensive notice to interested parties of a number of specified terms. The motion must either not exceed five pages in length, or, if it is longer, begin with a concise statement of five pages or less, that summarizes or lists the material provisions and which will assist the court and interested parties in understanding the nature of the



relief requested. The concise statement must also set out the location within the documents of the summarized or listed provisions. The parties to agreements and lending offers frequently have concise summaries of their transactions that contain a list of the material provisions of the agreements, even if the agreements themselves are very lengthy. A similar summary should allow the court and interested parties to understand the relief requested.

In addition to the concise statement, the rule requires that motions under subdivisions (c) and (d) state whether the movant is seeking approval of any of the provisions listed in subdivision (c)(1)(B), and where those provisions are located in the documents. The rule is intended to enhance the ability of the court and interested parties to find and evaluate those provisions.

The rule also provides that any motion for authority to obtain credit must identify any provision listed in subdivision (c)(1)(B)(i)–(xi) that is proposed to remain effective if the court grants the motion on an interim basis under Rule 4001(c)(2), but later denies final relief.

Other amendments are stylistic.

#### *Changes Made After Publication.*

1. The introductory language in subdivisions (b)(1)(B), (c)(1)(B), and (d)(1)(B) was revised to clarify that the motions filed under the rule can be either no more than five pages long or begin with a concise statement of that length. This permits the continued use of forms that have been effective in smaller cases. Subdivision (c)(1)(B) also is amended to require that the motion identify any provisionally approved term that would remain in effect even if the court denies the permanent relief requested.

2. A new subparagraph (c)(1)(B)(vi) was inserted into the rule and the remaining subparagraphs were renumbered accordingly. The new subparagraph requires that the motion identify any provisions setting deadlines for filing and confirming reorganization plans and disclosure statements.

3. Subdivisions (c)(1)(C) and (d)(1)(C) of the proposed rule were deleted as unnecessary. The court has whatever authority Rule 9024 provides, and making an explicit reference to that rule in these subdivisions brings unnecessary attention to Rule 9024 and could create a different standard of review under that rule than would apply in other instances. The Advisory Committee did not intend either consequence, so the subdivisions were deleted.

4. Subdivision (d)(1)(ii) was restyled to form a vertical list of the motions subject to that provision.

#### **COMMITTEE NOTES ON RULES—2009 AMENDMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

## COMMITTEE NOTES ON RULES—2010 AMENDMENT

*Subdivision (d).* Subdivision (d) is amended to implement changes in connection with the 2009 amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in subdivision (d)(2) and (d)(3) are amended to substitute deadlines that are multiples of seven days. Throughout the rules, deadlines have been amended in the following manner:

- 5 day periods become 7 day periods
- 10 day periods become 14 day periods
- 15 day periods become 14 day periods
- 20 day periods become 21 day periods
- 25 day periods become 28 day periods

Final approval of the amendments to this rule is sought without publication.

## COMMITTEE NOTES ON RULES—2019 AMENDMENT

Subdivision (c) of the rule is amended to exclude chapter 13 cases from that subdivision. This amendment does not speak to the underlying substantive issue of whether the Bankruptcy Code requires or permits a chapter 13 debtor not engaged in business to request approval of postpetition credit.

<sup>1</sup> So in original. Probably should be only one section symbol.

## Rule 4002. Duties of Debtor

(a) In General. In addition to performing other duties prescribed by the Code and rules, the debtor shall:

- (1) attend and submit to an examination at the times ordered by the court;
- (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness;
- (3) inform the trustee immediately, in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1009;
- (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate; and
- (5) file a statement of any change of the debtor's address.

(b) Individual Debtor's Duty To Provide Documentation.

(1) *Personal Identification.* Every individual debtor shall bring to the meeting of creditors under §341:

- (A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and
- (B) evidence of social-security number(s), or a written statement that such documentation does not exist.

(2) *Financial Information.* Every individual debtor shall bring to the meeting of creditors under §341, and make available to the trustee, the following documents or copies of them, or provide a written statement that the documentation does not exist or is not in the debtor's possession:

- (A) evidence of current income such as the most recent payment advice;
- (B) unless the trustee or the United States trustee instructs otherwise, statements for each of the debtor's depository and investment accounts, including checking, savings, and money

market accounts, mutual funds and brokerage accounts for the time period that includes the date of the filing of the petition; and

(C) documentation of monthly expenses claimed by the debtor if required by §707(b)(2)(A) or (B).

(3) *Tax Return.* At least 7 days before the first date set for the meeting of creditors under §341, the debtor shall provide to the trustee a copy of the debtor's federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.

(4) *Tax Returns Provided to Creditors.* If a creditor, at least 14 days before the first date set for the meeting of creditors under §341, requests a copy of the debtor's tax return that is to be provided to the trustee under subdivision (b)(3), the debtor, at least 7 days before the first date set for the meeting of creditors under §341, shall provide to the requesting creditor a copy of the return, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.

(5) *Confidentiality of Tax Information.* The debtor's obligation to provide tax returns under Rule 4002(b)(3) and (b)(4) is subject to procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 23, 2009, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### **NOTES OF ADVISORY COMMITTEE ON RULE 1003**

This rule should be read together with §§343 and 521 of the Code and Rule 1007, all of which impose duties on the debtor. Clause (3) of this rule implements the provisions of Rule 2015(a).

#### **NOTES OF ADVISORY COMMITTEE ON RULE 1003 1987 AMENDMENT**

New clause (5) of the rule imposes on the debtor the duty to advise the clerk of any change of the debtor's address.

#### **COMMITTEE NOTES ON RULES—2008 AMENDMENT**

This rule is amended to implement §541(a)(1)(B)(iv) and (e)(2), added to the Code by the 2005 amendments. These Code amendments expressly require the debtor to file with the court, or provide to the trustee, specific documents. The amendments to the rule implement these obligations and establish a time frame for creditors to make requests for a copy of the debtor's Federal income tax return. The rule also requires the debtor to provide documentation in support of claimed expenses under §707(b)(2)(A) and (B).

Subdivision (b) of the rule is also amended to require the debtor to cooperate with the trustee by providing materials and documents necessary to assist the trustee in the performance of the trustee's duties. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under §521, or to limit the access of the Attorney General to any information provided by the debtor in the case. Subdivision (b)(2) does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the meeting of creditors under §341 the documents which the debtor possesses. Under subdivision (b)(2)(B), the trustee or the United States trustee can instruct debtors that they need not provide the documents described in that subdivision. Under subdivisions (b)(3) and (b)(4), the debtor must obtain and provide copies of tax returns or tax transcripts to the appropriate person, unless no such documents exist. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

## PART V—COURTS AND CLERKS

### Rule 5001. Courts and Clerks' Offices

(a) Courts Always Open. The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.

(b) Trials and Hearings; Orders in Chambers. All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. Except as otherwise provided in 28 U.S.C. §152(c), all other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) Clerk's Office. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 9006(a).

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 2008, eff. Dec. 1, 2008.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from subdivisions (a), (b) and (c) of Rule 77 F.R.Civ.P.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

Rule 9001, as amended, defines court to mean the bankruptcy judge or district judge before whom a case or proceeding is pending. Clerk means the bankruptcy clerk, if one has been appointed for the district; if a bankruptcy clerk has not been appointed, clerk means clerk of the district court.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

*Subdivision (c)* is amended to refer to Rule 9006(a) for a list of legal holidays. Reference to F.R.Civ.P. is not necessary for this purpose.

#### COMMITTEE NOTES ON RULES—2008 AMENDMENT

The rule is amended to permit bankruptcy judges to hold hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the 2008 amendment to 28 U.S.C. §152(c). Under that provision, bankruptcy judges may hold court outside of their districts in emergency situations and when the business of the court otherwise so requires. This amendment to the rule is intended to implement the legislation.

*Changes Made After Publication.* No changes were made after publication.

### Rule 5002. Restrictions on Approval of Appointments

(a) Approval of Appointment of Relatives Prohibited. The appointment of an individual as a trustee or examiner pursuant to §1104 of the Code shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the appointment or the United States trustee in the region in which the case is pending. The employment of an individual as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§327, 1103, or 1114 shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the employment. The employment of an individual as attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§327, 1103, or 1114 may be approved by the court if the individual is a relative of the United States trustee in the region in which the case is pending,

unless the court finds that the relationship with the United States trustee renders the employment improper under the circumstances of the case. Whenever under this subdivision an individual may not be approved for appointment or employment, the individual's firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof also may not be approved for appointment or employment.

**(b) Judicial Determination That Approval of Appointment or Employment Is Improper.** A bankruptcy judge may not approve the appointment of a person as a trustee or examiner pursuant to §1104 of the Code or approve the employment of a person as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§327, 1103, or 1114 of the Code if that person is or has been so connected with such judge or the United States trustee as to render the appointment or employment improper.

(As amended Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 30, 1991, eff. Aug. 1, 1991.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

This rule is adapted from former Bankruptcy Rule 505(a). The scope of the prohibition on appointment or employment is expanded to include an examiner appointed under §1104 of the Code and attorneys and other professional persons whose employment must be approved by the court under §327 or §1103.

The rule supplements two statutory provisions. Under 18 U.S.C. §1916, it is a criminal offense for a judge to appoint a relative as a trustee and, under 28 U.S.C. §458, a person may not be "appointed to or employed in any office or duty in any court" if he is a relative of any judge of that court. The rule prohibits the appointment or employment of a relative of a bankruptcy judge in a case pending before that bankruptcy judge or before other bankruptcy judges sitting within the district.

A relative is defined in §101(34) of the Code to be an "individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree. Persons within the third degree under the common law system are as follows: first degree—parents, brothers and sisters, and children; second degree—grandparents, uncles and aunts, and cousins, nephews and nieces, and grandchildren; third degree—great grandparents, great uncles and aunts, first cousins once removed, second cousins, grand nephews and nieces, great grandchildren. Rule 9001 incorporates the definitions of §101 of the Code.

In order for the policy of the rule to be meaningfully implemented, it is necessary to extend the prohibition against appointment or employment to the firm or other business association of the ineligible person and to those affiliated with the firm or business association. "Firm" is defined in Rule 9001 to include a professional partnership or corporation of attorneys or accountants. All other types of business and professional associations and relationships are covered by this rule.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT**

The amended rule is divided into two subdivisions. Subdivision (a) applies to relatives of bankruptcy judges and subdivision (b) applies to persons who are or have been connected with bankruptcy judges. Subdivision (a) permits no judicial discretion; subdivision (b) allows judicial discretion. In both subdivisions of the amended rule "bankruptcy judge" has been substituted for "judge". The amended rule makes clear that it only applies to relatives of, or persons connected with, the bankruptcy judge. See *In re Hilltop Sand and Gravel, Inc.*, 35 B.R. 412 (N.D. Ohio 1983).

**Subdivision (a).** The original rule prohibited all bankruptcy judges in a district from appointing or approving the employment of (i) a relative of any bankruptcy judge serving in the district, (ii) the firm or business association of any ineligible relative and (iii) any member or professional

employee of the firm or business association of an ineligible relative. In addition, the definition of relative, the third degree relationship under the common law, is quite broad. The restriction on the employment opportunities of relatives of bankruptcy judges was magnified by the fact that many law and accounting firms have practices and offices spanning the nation.

Relatives are not eligible for appointment or employment when the bankruptcy judge to whom they are related makes the appointment or approves the employment. Canon 3(b)(4) of the Code of Judicial Conduct, which provides that the judge "shall exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism," should guide a bankruptcy judge when a relative of a judge of the same bankruptcy court is considered for appointment or employment.

*Subdivision (b)*, derived from clause (2) of the original rule, makes a person ineligible for appointment or employment if the person is so connected with a bankruptcy judge making the appointment or approving the employment as to render the appointment or approval of employment improper. The caption and text of the subdivision emphasize that application of the connection test is committed to the sound discretion of the bankruptcy judge who is to make the appointment or approve the employment. All relevant circumstances are to be taken into account by the court. The most important of those circumstances include: the nature and duration of the connection with the bankruptcy judge; whether the connection still exists, and, if not, when it was terminated; and the type of appointment or employment. These and other considerations must be carefully evaluated by the bankruptcy judge.

The policy underlying subdivision (b) is essentially the same as the policy embodied in the Code of Judicial Conduct. Canon 2 of the Code of Judicial Conduct instructs a judge to avoid impropriety and the appearance of impropriety, and Canon 3(b)(4) provides that the judge "should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism." Subdivision (b) alerts the potential appointer or employee and party seeking approval of employment to consider the possible relevance or impact of subdivision (b) and indicates to them that appropriate disclosure must be made to the bankruptcy court before accepting appointment or employment. The information required may be made a part of the application for approval of employment. See Rule 201(a).

Subdivision (b) departs from the former rule in an important respect: a firm or business association is not prohibited from appointment or employment merely because an individual member or employee of the firm or business association is ineligible under subdivision (b).

The emphasis given to the bankruptcy court's judicial discretion in applying subdivision (b) and the absence of a *per se* extension of ineligibility to the firm or business association or any ineligible individual complement the amendments to subdivision (a). The change is intended to moderate the prior limitation on the employment opportunities of attorneys, accountants and other professional persons who are or who have been connected in some way with the bankruptcy judge. For example, in all but the most unusual situations service as a law clerk to a bankruptcy judge is not the type of connection which alone precludes appointment or employment. Even if a bankruptcy judge determines that it is improper to appoint or approve the employment of a former law clerk in the period immediately after completion of the former law clerk's service with the judge, the firm which employs the former law clerk will, absent other circumstances, be eligible for employment. In each instance all the facts must be considered by the bankruptcy judge.

Subdivision (b) applies to persons connected with a bankruptcy judge. "Person" is defined in §101 of the Bankruptcy Code to include an "individual, partnership and corporation". A partnership or corporation may be appointed or employed to serve in a bankruptcy case. If a bankruptcy judge is connected in some way with a partnership or corporation, it is necessary for the court to determine whether the appointment or employment of that partnership or corporation is proper.

## PART VII—ADVERSARY PROCEEDINGS

### Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
- (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), <sup>1</sup> (a)(9), or 1328(f);
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 27, 2017, eff. Dec. 1, 2017.)

### NOTES OF ADVISORY COMMITTEE ON RULES—1983

The rules in Part VII govern the procedural aspects of litigation involving the matters referred to in this Rule 7001. Under Rule 9011, some of the Part VII rules also apply to contested matters.

These Part VII rules are based on the premise that to the extent possible practice before the bankruptcy courts and the district courts should be the same. These rules either incorporate or are adaptations of most of the Federal Rules of Civil Procedure. Although the Part VII rules of the former Bankruptcy Rules are related heavily on the F.R.Civ.P., the former Part VII rules departed from the civil practice in two significant ways: a trial or pretrial conference had to be scheduled as soon as the adversary proceeding was filed and pleadings had to be filed within periods shorter than those established by the F.R.Civ.P. These departures from the civil practice have been eliminated.

The content and numbering of these Part VII rules correlates to the content and numbering of the F.R.Civ.P. Most, but not all, of the F.R.Civ.P. have a comparable Part VII rule. When there is no Part VII rule with a number corresponding to a particular F.R.Civ.P., Parts V and IX of these rules must be consulted to determine if one of the rules in those parts deals with the subject. The list below indicates the F.R.Civ.P., or subdivision thereof, covered by a rule in either Part V or Part IX.

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F.R.Civ.P.	Rule in Part V or IX
6	9006
7(b)	9013
10(a)	9004(b)
11	9011
38,39	9015(a)–(e)
47–51	9015(f)
43,44,44.1	9017
45	9016
58	9021
59	9023
60	9024
61	9005
63	9028
77(a),(b),(c)	5001
77(d)	9022(d)
79(a)–(d)	5003
81(c)	9027
83	9029
92	9025

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Proceedings to which the rules in Part VII apply directly include those brought to avoid transfers by the debtor under §§544, 545, 547, 548 and 550 of the Code; subject to important exceptions, proceedings to recover money or property; proceedings on bonds under Rules 5008(d) and 9025; proceedings under Rule 9004 to determine whether a discharge in a chapter 7 or 11 case should be denied because of an objection grounded on §727 and proceedings in a chapter 7 or 13 case to revoke a discharge as provided in §§727(d) or 1328(e); and proceedings initiated pursuant to §523(c) of the Code to determine the dischargeability of a particular debt. Those proceedings were classified as adversary proceedings under former Bankruptcy Rule 701.

Also included as adversary proceedings are proceedings to revoke an order of confirmation of a plan in a chapter 11 or 13 case as provided in §§1144 and 1330, to subordinate under §510(c), other than as part of a plan, an allowed claim or interest, and to sell under §363(h) both the interest of the estate and a co-owner in property.

Declaratory judgments with respect to the subject matter of the various adversary proceedings are also adversary proceedings.

Any claim or cause of action removed to a bankruptcy court pursuant to 28 U.S.C. §1478 is also an adversary proceeding.

Unlike former Bankruptcy Rule 701, requests for relief from an automatic stay do not commence an adversary proceeding. Section 362(e) of the Code and Rule 4001 establish an expedited schedule for judicial disposition of requests for relief from the automatic stay. The formalities of the adversary proceeding process and the time for serving pleadings are not well suited to the expedited schedule. The motion practice prescribed in Rule 4001 is best suited to such requests



because the court has the flexibility to fix hearing dates and other deadlines appropriate to the particular situation.

Clause (1) contains important exceptions. A person with an interest in property in the possession of the trustee or debtor in possession may seek to recover or reclaim that property under §554(b) or §725 of the Code. Since many attempts to recover or reclaim property under these two sections do not generate disputes, application of the formalities of the Part VII Rules is not appropriate. Also excluded from adversary proceedings is litigation arising from an examination under Rule 2017 of a debtor's payments of money or transfers of property to an attorney representing the debtor in a case under the Code or an examination of a superseded administration under Rule 6002.

Exemptions and objections thereto are governed by Rule 4003. Filing of proofs of claim and the allowances thereof are governed by Rules 3001–3005, and objections to claims are governed by Rule 3007. When an objection to a claim is joined with a demand for relief of the kind specified in this Rule 7001, the matter becomes an adversary proceeding. See Rule 3007.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

Another exception is added to clause (1). A trustee may proceed by motion to recover property from the debtor.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

Clauses (5) and (8) are amended to include chapter 12 plan.

#### **COMMITTEE NOTES ON RULES—1999 AMENDMENT**

This rule is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief that is provided for in a plan under circumstances in which substantive law permits the relief. Other amendments are stylistic.

*GAP Report on Rule 7001.* No changes since publication, except for stylistic changes.

#### **COMMITTEE NOTES ON RULES—2010 AMENDMENT**

Paragraph (4) of the rule is amended to create an exception for objections to discharge under §§727(a)(8), (a)(9), and 1328(f) of the Code. Because objections to discharge on these grounds typically present issues more easily resolved than other objections to discharge, the more formal procedures applicable to adversary proceedings, such as commencement by a complaint, are not required. Instead, objections on these three grounds are governed by Rule 4004(d). In an appropriate case, however, Rule 9014(c) allows the court to order that additional provisions of Part VII of the rules apply to these matters.

*Changes Made After Publication.* The proposed addition of subsection (b) was deleted, and the content of that provision was moved to Rule 4004(d). The exception in paragraph (4) of the rule was revised to refer to objections to discharge under §§727(a)(8), (a)(9), and 1328(f) of the Code. The redesignation of the existing rule as subdivision (a) was also deleted. The Committee Note was revised to reflect these changes.

#### **COMMITTEE NOTES ON RULES—2017 AMENDMENT**

Subdivision (2) is amended to provide that the determination of the amount of a secured claim under Rule 3012, like a proceeding by the debtor to avoid a lien on or other transfer of exempt property under Rule 4003(d), does not require an adversary proceeding. The determination of the amount of a secured claim may be sought by motion or through a chapter 12 or chapter 13 plan in accordance with Rule 3012. An adversary proceeding continues to be required for lien avoidance not governed by Rule 4003(d).

<sup>1</sup> *So in original. Probably should be only one section symbol.*

## **Rule 7002. References to Federal Rules of Civil Procedure**

Whenever a Federal Rule of Civil Procedure applicable to adversary proceedings makes reference to another Federal Rule of Civil Procedure, the reference shall be read as a reference to the Federal Rule of Civil Procedure as modified in this Part VII.

### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

Rules 5, 12, 13, 14, 25, 27, 30, 41 and 52 F.R.Civ.P. are made applicable to adversary proceedings by Part VII. Each of those rules contains a cross reference to another Federal Rule; however, the Part VII rule which incorporates the cross-referenced Federal Rule modifies the Federal Rule in some way. Under this Rule 7002 the cross reference is to the Federal Rule as modified by Part VII. For example, Rule 5 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7005, contains a reference to Rule 4 F.R.Civ.P. Under this Rule 7002, the cross reference is to Rule 4 F.R.Civ.P. as modified by Rule 7004.

Rules 7, 10, 12, 13, 14, 19, 22, 23.2, 24–37, 41, 45, 49, 50, 52, 53, 59, 60, 62 F.R.Civ.P. are made applicable to adversary proceedings by Part VII or generally in cases under the Code by Part IX. Each of those Federal Rules contains a cross reference to another Federal Rule which is not modified by the Part VII or Part IX rule which makes the cross-referenced Federal Rule applicable. Since the cross-referenced rule is not modified by a Part VII rule this Rule 7002 does not apply.

### **REFERENCES IN TEXT**

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

## **Rule 7003. Commencement of Adversary Proceeding**

Rule 3 F.R.Civ.P. applies in adversary proceedings.

### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

Rule 5005(a) requires that a complaint commencing an adversary proceeding be filed with the court in which the case under the Code is pending unless 28 U.S.C. §1473 authorizes the filing of the complaint in another district.

### **REFERENCES IN TEXT**

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

## **Rule 7004. Process; Service of Summons, Complaint**

(a) Summons; Service; Proof of Service.

(1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1), (d)(5), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

(2) The clerk may sign, seal, and issue a summons electronically by putting an "s/" before the clerk's name and including the court's seal on the summons.

(b) Service by First Class Mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

**(9)** Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.

**(10)** Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.

**(c)** Service by Publication. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)–(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct.

**(d)** Nationwide Service of Process. The summons and complaint and all other process except a subpoena may be served anywhere in the United States.

**(e)** Summons: Time Limit for Service Within the United States. Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F.R.Civ.P. shall be by delivery of the summons and complaint within 7 days after the summons is issued. If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 7 days after the summons is issued. If a summons is not timely delivered or mailed, another summons may be issued for service. This subdivision does not apply to service in a foreign country.

**(f)** Personal Jurisdiction. If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.

**(g)** Service on Debtor's Attorney. If a debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney by any means authorized under Rule 5(f) F.R.Civ.P.

**(h)** Service of Process on an Insured Depository Institution. Service on an insured depository institution (as defined in Section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—

**(1)** the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

**(2)** the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

**(3)** the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Pub. L. 103–394, title I, §114, Oct. 22, 1994, 108 Stat. 4118; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006, eff. Dec. 1, 2006; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 25, 2014, eff. Dec. 1, 2014; Apr. 26, 2018, eff. Dec. 1, 2018.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

*Subdivision (a)* of the rule, by incorporation of Rule 4(a), (b), (d), (e) and (g)–(i) F.R.Civ.P., governs the mechanics of issuance of a summons and its form, the manner of service on parties and their representatives, and service in foreign countries.

*Subdivision (b)*, which is the same as former Rule 704(c), authorizes service of process by first class mail postage prepaid. This rule retains the modes of service contained in former Bankruptcy Rule 704. The former practice, in effect since 1976, has proven satisfactory.

*Subdivision (c)* is derived from former Bankruptcy Rule 704(d)(2).

*Subdivision (d)*. Nationwide service of process is authorized by subdivision (d).

*Subdivision (e)* authorizes service by delivery on individuals and corporations in foreign countries if the party to be served is the debtor or any person required to perform the duties of the debtor and certain other persons, the adversary proceeding involves property in the custody of the bankruptcy court, or if federal or state law authorizes such service in a foreign country.

*Subdivision (f)*. The requirement of former Bankruptcy Rule 704 that the summons be served within 10 days is carried over into these rules by subdivision (f).

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

*Subdivision (a)* is amended to make Rule 4(j) F.R.Civ.P. applicable to service of the summons. If service is not completed within 120 days of the filing of the complaint, the complaint may be dismissed.

Technical amendments are made to subdivisions (a), (b), (e), and (f) to conform to recent amendments to Rule 4 F.R.Civ.P.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

The United States trustee may serve as trustee in a case pursuant to 28 U.S.C. §586(a)(2) and §§701(a)(2), 1202(a), and 1302(a) of the Code. This rule is amended to avoid the necessity of mailing copies of a summons and complaint or other pleadings to the Attorney General and to the United States attorney when service on the United States trustee is required only because the United States trustee is acting as a case trustee. For example, a proceeding commenced by a creditor to dismiss a case for unreasonable delay under §707(a) is governed by Rule 9014 which requires service on the trustee pursuant to the requirements of Rule 7004 for the service of a summons and complaint. The Attorney General and the United States attorney would have no interest in receiving a copy of the motion to dismiss. Mailing to the office of the United States trustee when acting as the case trustee is sufficient in such cases.

The words "with the court" in subdivision (b)(9) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

The new paragraph (10) of subdivision (b) does not affect requirements for service of process on the United States trustee when sued or otherwise a party to a litigation unrelated to its capacity as a trustee. If a proceeding is commenced against the United States trustee which is unrelated to the United States trustee's role as trustee, the requirements of paragraph (5) of subdivision (b) of this rule would apply.

*Subdivision (g)* is added in anticipation of substantial amendment to, and restructuring of subdivisions of, Rule 4 F.R.Civ.P. Any amendment to Rule 4 will not affect service in bankruptcy cases and proceedings until further amendment to the Bankruptcy Rules. On January 1, 1990, Rule 4 F.R.Civ.P. read as follows:

#### **RULE 4 F.R.CIV.P. PROCESS**

(a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) Same: Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint. When, under Rule 4(e), service is made pursuant to a statute or rule of court of a state, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

(c) Service.

(1) [Not applicable.]

(2)(A) [Not applicable.]

(B) [Not applicable.]

(C) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule—

(i) pursuant to the law of the State in which the district court is held for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

(ii) [Not applicable.]

(D) [Not applicable.]

(E) [Not applicable.]

(3) [Not applicable.]

(d) Summons and Complaint: Person To Be Served. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant or an incompetent person, by serving the summons and complaint in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one

authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

(5) Upon an officer or agency of the United States, by serving the United States and by sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(e) Summons: Service Upon Party Not Inhabitant of or Found Within State. Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to such a party to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of the party's property located within the state, service in either case be made under the circumstances and in the manner prescribed in the statute or rule.

(f) [Not applicable.]

(g) Return. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or deputy United States marshal, such person shall make affidavit thereof. If service is made under subdivision (c)(2)(C)(ii) of this rule, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

(h) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) Alternative Provisions for Service in a Foreign Country.

(1) *Manner*. When the federal or state law referred to in subdivision (e) of this rule authorizes service upon a party not an inhabitant of or found within the state in which the district court is held, and service is to be effected upon the party in a foreign country, it is also sufficient

if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the district court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) *Return*. Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(j) *Summons: Time Limit for Service*. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (i) of this rule.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1996 AMENDMENT

The purpose of these amendments is to conform the rule to the 1993 revisions of Rule 4 F.R.Civ.P. and to make stylistic improvements. Rule 7004, as amended, continues to provide for service by first class mail as an alternative to the methods of personal service provided in Rule 4 F.R.Civ.P., except as provided in the new subdivision (h).

Rule 4(d)(2) F.R.Civ.P. provides a procedure by which the plaintiff may request by first class mail that the defendant waive service of the summons. This procedure is not applicable in adversary proceedings because it is not necessary in view of the availability of service by mail pursuant to Rule 7004(b). However, if a written waiver of service of a summons is made in an adversary proceeding, Rule 4(d)(2) F.R.Civ.P. applies so that the defendant does not thereby waive any objection to the venue or the jurisdiction of the court over the person of the defendant.

*Subdivisions (b)(4) and (b)(5)* are amended to conform to the 1993 amendments to Rule 4(i)(3) F.R.Civ.P., which protect the plaintiff from the hazard of losing a substantive right because of failure to comply with the requirements of multiple service when the United States or an officer, agency, or corporation of the United States is a defendant. These subdivisions also are amended to require that the summons and complaint be addressed to the civil process clerk at the office of the United States attorney.

*Subdivision (e)*, which has governed service in a foreign country, is abrogated and Rule 4(f) and (h)(2) F.R.Civ.P., as substantially revised in 1993, are made applicable in adversary proceedings.

The new subdivision (f) is consistent with the 1993 amendments to F.R.Civ.P. 4(k)(2). It clarifies that service or filing a waiver of service in accordance with this rule or the applicable subdivisions of F.R.Civ.P. 4 is sufficient to establish personal jurisdiction over the defendant. See the committee note to the 1993 amendments to Rule 4 F.R.Civ.P.



*Subdivision (g)* is abrogated. This subdivision was promulgated in 1991 so that anticipated revisions to Rule 4 F.R.Civ.P. would not affect service of process in adversary proceedings until further amendment to Rule 7004.

*Subdivision (h)* and the first phrase of subdivision (b) were added by §114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103–394, 108 Stat. 4106.

*GAP Report on Rule 7004.* After publication of the proposed amendments, Rule 7004(b) was amended and Rule 7004(h) was added by the Bankruptcy Reform Act of 1994 to provide for service by certified mail on an insured depository institution. The above draft includes those statutory amendments (without underlining new language or striking former language). No other changes have been made since publication, except for stylistic changes.

#### **COMMITTEE NOTES ON RULES—1999 AMENDMENT**

*Subdivision (e)* is amended so that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.

*GAP Report on Rule 7004.* No changes since publication.

#### **COMMITTEE NOTES ON RULES—2005 AMENDMENT**

This amendment specifically authorizes the clerk to issue a summons electronically. In some bankruptcy cases the trustee or debtor in possession may commence hundreds of adversary proceedings simultaneously, and permitting the electronic signing and sealing of the summonses for those proceedings increases the efficiency of the clerk's office without any negative impact on any party. The rule only authorizes electronic issuance of the summons. It does not address the service requirements for the summons. Those requirements are set out elsewhere in Rule 7004, and nothing in Rule 7004(a)(2) should be construed as authorizing electronic service of a summons.

*Changes Made After Publication and Comment.* No changes were made after publication.

#### **COMMITTEE NOTES ON RULES—2006 AMENDMENT**

Under current Rule 7004, an entity may serve a summons and complaint upon the debtor by personal service or by mail. If the entity chooses to serve the debtor by mail, it must also serve a copy of the summons and complaint on the debtor's attorney by mail. If the entity effects personal service on the debtor, there is no requirement that the debtor's attorney also be served.

*Subdivision (b)(9).* The rule is amended to delete the reference in subdivision (b)(9) to the debtor's address as set forth in the statement of financial affairs. In 1991, the Official Form of the statement of financial affairs was revised and no longer includes a question regarding the debtor's current residence. Since that time, Official Form 1, the petition, has required the debtor to list both the debtor's residence and mailing address. Therefore, the subdivision is amended to delete the statement of financial affairs as a document that might contain an address at which the debtor can be served.

*Subdivision (g).* The rule is amended to require service on the debtor's attorney whenever the debtor is served with a summons and complaint. The amendment makes this change by deleting that portion of Rule 7004(b)(9) that requires service on the debtor's attorney when the debtor is served by mail, and relocates the obligation to serve the debtor's attorney into new subdivision (g). Service on the debtor's attorney is not limited to mail service, but may be accomplished by any means permitted under Rule 5(b) F.R.Civ.P.

*Changes Made After Publication.* The Committee Note was amended to add the final [second] paragraph of the Note. The new paragraph describes the reason for the deletion of the reference

in the rule to the statement of affairs as a source for the debtor's address. This was a secondary reason for amending the rule, and even in the absence of public comment on the proposed amendment, the Advisory Committee believes that the additional explanation in the Committee Note is appropriate.

#### **COMMITTEE NOTES ON RULES—2009 AMENDMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

#### **COMMITTEE NOTES ON RULES—2014 AMENDMENT**

Subdivision (e) is amended to alter the period of time during which service of the summons and complaint must be made. The amendment reduces that period from fourteen days to seven days after issuance of the summons. Because Rule 7012 provides that the defendant's time to answer the complaint is calculated from the date the summons is issued, a lengthy delay between issuance and service of the summons may unduly shorten the defendant's time to respond. The amendment is therefore intended to encourage prompt service after issuance of a summons. If service of the summons within any seven-day period is impracticable, a court retains the discretion to enlarge that period of time under Rule 9006(b).

*Changes Made After Publication and Comment.* A new sentence referring to the availability of an enlargement of time under Rule 9006(b) was added to the Committee Note. The only other change made after publication and comment was stylistic.

#### **COMMITTEE NOTES ON RULES—2018 AMENDMENT**

In 1996, Rule 7004(a) was amended to incorporate by reference F.R.Civ.P. 4(d)(1). Civil Rule 4(d)(1) addresses the effect of a defendant's waiver of service. In 2007, Civil Rule 4 was amended, and the language of old Civil Rule 4(d)(1) was modified and renumbered as Civil Rule 4(d)(5). Accordingly, Rule 7004(a) is amended to update the cross-reference to Civil Rule 4.

#### **REFERENCES IN TEXT**

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 3 of the Federal Deposit Insurance Act, referred to in subd. (h), is classified to section 1813 of Title 12, Banks and Banking.

#### **AMENDMENT BY PUBLIC LAW**

**1994**—Subd. (b). Pub. L. 103–394, §114(1), substituted "Except as provided in subdivision (h), in addition" for "In addition".

Subd. (h). Pub. L. 103–394, §114(2), added subd. (h).

#### **EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

## **Rule 7005. Service and Filing of Pleadings and Other Papers**

Rule 5 F.R.Civ.P. applies in adversary proceedings.

### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

Rule 5 F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 this reference is to Rule 4 F.R.Civ.P. as incorporated and modified by Rule 7004.

### **REFERENCES IN TEXT**

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

## **Rule 7007. Pleadings Allowed**

Rule 7 F.R.Civ.P. applies in adversary proceedings.

### **REFERENCES IN TEXT**

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

## **Rule 7007.1. Corporate Ownership Statement**

(a) Required Disclosure. Any corporation that is a party to an adversary proceeding, other than the debtor or a governmental unit, shall file two copies of a statement that identifies any corporation, other than a governmental unit, that directly or indirectly owns 10% or more of any class of the corporation's equity interests, or state that there are no entities to report under this subdivision.

(b) Time for Filing. A party shall file the statement required under Rule 7007.1(a) with its first appearance, pleading, motion, response, or other request addressed to the court. A party shall file a supplemental statement promptly upon any change in circumstances that this rule requires the party to identify or disclose.

(Added Mar. 27, 2003, eff. Dec. 1, 2003, amended Apr. 30, 2007, eff. Dec. 1, 2007.)

### **COMMITTEE NOTES ON RULES—2003**

This rule is derived from Rule 26.1 of the Federal Rules of Appellate Procedure. The information that parties shall supply will support properly informed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c) of the Code of Conduct for United States Judges. This rule does not cover all of the circumstances that may call for disqualification under the subjective financial interest standard of Canon 3C, and does not deal at all with other circumstances that may call for disqualification. Nevertheless, the required disclosures are calculated to reach the majority of circumstances that are likely to call for disqualification under Canon 3C(1)(c).

The rule directs nongovernmental corporate parties to list those corporations that hold significant ownership interests in them. This includes listing membership interests in limited liability companies and similar entities that fall under the definition of a corporation in Bankruptcy Code §101.

Under subdivision (b), parties must file the statement with the first document that they file in any adversary proceeding. The rule also requires parties and other persons to file supplemental

statements promptly whenever changed circumstances require disclosure of new or additional information.

The rule does not prohibit the adoption of local rules requiring disclosures beyond those called for in Rule 7007.1.

*Changes Made After Publication and Comments.* No changes since publication.

#### **COMMITTEE NOTES ON RULES—2007 AMENDMENT**

The rule is amended to clarify that a party must file a corporate ownership statement with its initial paper filed with the court in an adversary proceeding. The party's initial filing may be a document that is not a "pleading" as defined in Rule 7 F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7007. The amendment also brings Rule 7007.1 more closely in line with Rule 7.1 F. R. Civ. P.

*Changes After Publication.* No changes were made after publication.

### **Rule 7008. General Rules of Pleading**

Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegations 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.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 28, 2016, eff. Dec. 1, 2014; Apr. 28, 2016, eff. Dec. 1, 2016.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

Proceedings before a bankruptcy judge are either core or non-core. 28 U.S.C. §157. A bankruptcy judge may enter a final order or judgment in a core proceeding. In a non-core proceeding, absent consent of the parties, the bankruptcy judge may not enter a final order or judgment but may only submit proposed findings of fact and conclusions of law to the district judge who will enter the final order or judgment. 28 U.S.C. §157(c)(1). The amendment to subdivision (a) of this rule requires an allegation as to whether a proceeding is core or non-core. A party who alleges that the proceeding is non-core shall state whether the party does or does not consent to the entry of a final order or judgment by the bankruptcy judge. Failure to include the statement of consent does not constitute consent. Only express consent in the pleadings or otherwise is effective to authorize entry of a final order or judgment by the bankruptcy judge in a non-core proceeding. Amendments to Rule 7012 require that the defendant admit or deny the allegation as to whether the proceeding is core or non-core.

#### **COMMITTEE NOTES ON RULES—2014 AMENDMENT**

The rule is amended to delete subdivision (b), which required a request for attorney's fees always to be pleaded as a claim in an allowed pleading. That requirement, which differed from the practice under the Federal Rules of Civil Procedure, had the potential to serve as a trap for the unwary.

The procedures for seeking an award of attorney's fees are now set out in Rule 7054(b)(2), which makes applicable most of the provisions of Rule 54(d)(2) F.R.Civ.P. As specified by Rule 54(d)(2)(A) and (B) F.R.Civ.P., a claim for attorney's fees must be made by a motion filed no later than 14 days after entry of the judgment unless the governing substantive law requires those fees to be proved at trial as an element of damages. When fees are an element of damages, such as

## PART VIII—APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL <sup>1</sup>

<sup>1</sup> The 2014 amendments to Part VIII of the Bankruptcy Rules are comprehensive. Proposed amendment of the heading, "Part VIII. Bankruptcy Appeals", was not transmitted for Congressional review.

### Rule 8001. Scope of Part VIII Rules; Definition of "BAP"; Method of Transmission

(a) General Scope. These Part VIII rules govern the procedure in a United States district court and a bankruptcy appellate panel on appeal from a judgment, order, or decree of a bankruptcy court. They also govern certain procedures on appeal to a United States court of appeals under 28 U.S.C. §158(d).

(b) Definition of "BAP." "BAP" means a bankruptcy appellate panel established by a circuit's judicial council and authorized to hear appeals from a bankruptcy court under 28 U.S.C. §158.

(c) Method of Transmitting Documents. A document must be sent electronically under these Part VIII rules, unless it is being sent by or to an individual who is not represented by counsel or the court's governing rules permit or require mailing or other means of delivery.

(Added Apr. 25, 2014, eff. Dec. 1, 2014.)

#### PRIOR RULE

A prior Rule 8001, Apr. 25, 1983, eff. Aug. 1, 1983, was amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009, relating to manner of taking appeal, voluntary dismissal, and certification to court of appeals, prior revision of Part VIII, Apr. 25, 2014, eff. Dec. 1, 2014.

#### COMMITTEE NOTES ON RULES—2014

These Part VIII rules apply to appeals under 28 U.S.C. §158(a) from bankruptcy courts to district courts and BAPs. The Federal Rules of Appellate Procedure generally govern bankruptcy appeals to courts of appeals.

Eight of the Part VIII rules do, however, relate to appeals to courts of appeals. Rule 8004(e) provides that the authorization by a court of appeals of a direct appeal of a bankruptcy court's interlocutory order or decree constitutes a grant of leave to appeal. Rule 8006 governs the procedure for certification under 28 U.S.C. §158(d)(2) of a direct appeal from a judgment, order, or decree of a bankruptcy court to a court of appeals. Rule 8007 addresses stays pending a direct appeal to a court of appeals. Rule 8008 authorizes a bankruptcy court to issue an indicative ruling while an appeal is pending in a court of appeals. Rules 8009 and 8010 govern the record on appeal in a direct appeal to a court of appeals. Rule 8025 governs the granting of a stay of a district court or BAP judgment pending an appeal to the court of appeals. And Rule 8028 authorizes the court of appeals to suspend applicable Part VIII rules in a particular case, subject to certain enumerated exceptions.

These rules take account of the evolving technology in the federal courts for the electronic filing, storage, and transmission of documents. Except as applied to pro se parties, the Part VIII rules require documents to be sent electronically, unless applicable court rules or orders expressly require or permit another means of sending a particular document.

*Changes Made After Publication and Comment.* No changes were made after publication and comment.

## Rule 8002. Time for Filing Notice of Appeal

### (a) In General.

(1) *Fourteen-Day Period.* Except as provided in subdivisions (b) and (c), a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed.

(2) *Filing Before the Entry of Judgment.* A notice of appeal filed after the bankruptcy court announces a decision or order—but before entry of the judgment, order, or decree—is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party files a timely notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise allowed by this rule, whichever period ends later.

(4) *Mistaken Filing in Another Court.* If a notice of appeal is mistakenly filed in a district court, BAP, or court of appeals, the clerk of that court must state on the notice the date on which it was received and transmit it to the bankruptcy clerk. The notice of appeal is then considered filed in the bankruptcy court on the date so stated.

### (5) Entry Defined.

(A) A judgment, order, or decree is entered for purposes of this Rule 8002(a):

(i) when it is entered in the docket under Rule 5003(a); or

(ii) if Rule 7058 applies and Rule 58(a) F.R.Civ.P. requires a separate document, when the judgment, order, or decree is entered in the docket under Rule 5003(a) and when the earlier of these events occurs:

- the judgment, order, or decree is set out in a separate document; or
- 150 days have run from entry of the judgment, order, or decree in the docket under Rule 5003(a).

(B) A failure to set out a judgment, order, or decree in a separate document when required by Rule 58(a) F.R.Civ.P. does not affect the validity of an appeal from that judgment, order, or decree.

### (b) Effect of a Motion on the Time to Appeal

(1) *In General.* If a party files in the bankruptcy court any of the following motions and does so within the time allowed by these rules, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(A) to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;

(B) to alter or amend the judgment under Rule 9023;

(C) for a new trial under Rule 9023; or

(D) for relief under Rule 9024 if the motion is filed within 14 days after the judgment is entered.

(2) *Filing an Appeal Before the Motion is Decided.* If a party files a notice of appeal after the court announces or enters a judgment, order, or decree—but before it disposes of any motion listed in subdivision (b)(1)—the notice becomes effective when the order disposing of the last such remaining motion is entered.

(3) *Appealing the Ruling on the Motion.* If a party intends to challenge an order disposing of any motion listed in subdivision (b)(1)—or the alteration or amendment of a judgment, order, or decree upon the motion—the party must file a notice of appeal or an amended notice of appeal. The notice or amended notice must comply with Rule 8003 or 8004 and be filed within the time prescribed by this rule, measured from the entry of the order disposing of the last such remaining motion.

(4) *No Additional Fee.* No additional fee is required to file an amended notice of appeal.

### (c) Appeal by an Inmate Confined in an Institution.

**(1) In General.** If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8002(c)(1). If an inmate files a notice of appeal from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

**(A)** it is accompanied by:

**(i)** a declaration in compliance with 28 U.S.C. §1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

**(ii)** evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

**(B)** the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 8002(c)(1)(A)(i).

**(2) Multiple Appeals.** If an inmate files under this subdivision the first notice of appeal, the 14-day period provided in subdivision (a)(3) for another party to file a notice of appeal runs from the date when the bankruptcy clerk docketed the first notice.

**(d) Extending the Time to Appeal.**

**(1) When the Time May be Extended.** Except as provided in subdivision (d)(2), the bankruptcy court may extend the time to file a notice of appeal upon a party's motion that is filed:

**(A)** within the time prescribed by this rule; or

**(B)** within 21 days after that time, if the party shows excusable neglect.

**(2) When the Time May Not be Extended.** The bankruptcy court may not extend the time to file a notice of appeal if the judgment, order, or decree appealed from:

**(A)** grants relief from an automatic stay under §362, 1201, or 1301 of the Code;

**(B)** authorizes the sale or lease of property or the use of cash collateral under §363 of the Code;

**(C)** authorizes the obtaining of credit under §364 of the Code;

**(D)** authorizes the assumption or assignment of an executory contract or unexpired lease under §365 of the Code;

**(E)** approves a disclosure statement under §1125 of the Code; or

**(F)** confirms a plan under §§1229, 1225, or 1325 of the Code.

**(3) Time Limits on an Extension.** No extension of time may exceed 21 days after the time prescribed by this rule, or 14 days after the order granting the motion to extend time is entered, whichever is later.

(Added Apr. 25, 2014, eff. Dec. 1, 2014; amended Apr. 26, 2018, eff. Dec. 1, 2018.)

#### **PRIOR RULE**

A prior Rule 8002, Apr. 25, 1983, eff. Aug. 1, 1983, as amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 1994, eff. Aug. 1, 1994; Apr. 11, 1997, eff. Dec. 1, 1997; Mar. 26, 2009, eff. Dec. 1, 2009, related to time for filing notice of appeal, prior to revision of Part VIII, Apr. 25, 2014, eff. Dec. 1, 2014.

#### **COMMITTEE NOTES ON RULES—2014**

This rule is derived from former Rule 8002 and F.R.App.P. 4(a) and (c). With the exception of subdivision (c), the changes to the former rule are stylistic. The rule retains the former rule's 14-day time period for filing a notice of appeal, as opposed to the longer periods permitted for appeals in civil cases under F.R.App.P. 4(a).

Subdivision (a) continues to allow any other party to file a notice of appeal within 14 days after the first notice of appeal is filed, or thereafter to the extent otherwise authorized by this rule.

Subdivision (a) also retains provisions of the former rule that prescribe the date the notice of appeal is deemed filed if the appellant files it prematurely or in the wrong court.

Subdivision (b), like former Rule 8002(b) and F.R.App.P. 4(a), tolls the time for filing a notice of appeal when certain postjudgment motions are filed, and it prescribes the effective date of a notice of appeal that is filed before the court disposes of all of the specified motions. As under the former rule, a party that wants to appeal the court's disposition of the motion or the alteration or amendment of a judgment, order, or decree in response to such a motion must file a notice of appeal or, if it has already filed one, an amended notice of appeal.

Although Rule 8003(a)(3)(C) requires a notice of appeal to be accompanied by the required fee, no additional fee is required for the filing of an amended notice of appeal.

Subdivision (c) mirrors the provisions of F.R.App.P. 4(c)(1) and (2), which specify timing rules for a notice of appeal filed by an inmate confined in an institution.

Subdivision (d) continues to allow the court to grant an extension of time to file a notice of appeal, except with respect to certain specified judgments, orders, and decrees.

*Changes Made After Publication and Comment.* Stylistic changes were made to the title of subdivision (b)(3) and to subdivision (c)(1).

#### COMMITTEE NOTES ON RULES—2018 AMENDMENTS

Clarifying amendments are made to subdivisions (a), (b), and (c) of the rule. They are modeled on parallel provisions of F.R.App.P. 4.

Paragraph (5) is added to subdivision (a) to clarify the effect of the separate-document requirement of F.R.Civ.P. 58(a) on the entry of a judgment, order, or decree for the purpose of determining the time for filing a notice of appeal.

Rule 7058 adopts F.R.Civ.P. 58 for adversary proceedings. If Rule 58(a) requires a judgment to be set out in a separate document, the time for filing a notice of appeal runs—subject to subdivisions (b) and (c)—from when the judgment is docketed and the judgment is set out in a separate document or, if no separate document is prepared, from 150 days from when the judgment is entered on the docket. The court's failure to comply with the separate-document requirement of Rule 58(a), however, does not affect the validity of an appeal.

Rule 58 does not apply in contested matters. Instead, under Rule 9021, a separate document is not required, and a judgment or order is effective when it is entered in the docket. The time for filing a notice of appeal under subdivision (a) therefore begins to run upon docket entry in contested matters, as well as in adversary proceedings for which Rule 58 does not require a separate document.

A clarifying amendment is made to subdivision (b)(1) to conform to a recent amendment to F.R.App.P. 4(a)(4)—from which Rule 8002(b)(1) is derived. Former Rule 8002(b)(1) provided that "[i]f a party timely files in the bankruptcy court" certain post-judgment motions, "the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion." Responding to a circuit split concerning the meaning of "timely" in F.R.App.P. 4(a)(4), the amendment adopts the majority approach and rejects the approach taken in *National Ecological Foundation v. Alexander*, 496 F.3d 466 (6th Cir. 2007). A motion made after the time allowed by the Bankruptcy Rules will not qualify as a motion that, under Rule 8002(b)(1), re-starts the appeal time—and that fact is not altered by, for example, a court order that sets a due date that is later than permitted by the Bankruptcy Rules, another party's consent or failure to object to the motion's lateness, or the court's disposition of the motion without explicit reliance on untimeliness.



Subdivision (c)(1) is revised to conform to F.R.App.P. 4(c)(1), which was recently amended to streamline and clarify the operation of the inmate-filing rule. The rule requires the inmate to show timely deposit and prepayment of postage. It is amended to specify that a notice is timely if it is accompanied by a declaration or notarized statement stating the date the notice was deposited in the institution's mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage "is being prepaid,"; not (as directed by the former rule) that first-class postage "has been prepaid." This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution's mail system. A new Director's Form sets out a suggested form of the declaration.

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the appellate court—district court, BAP, or court of appeals in the case of a direct appeal—has discretion to accept a declaration or notarized statement at a later date. The rule uses the phrase "exercises its discretion to permit"—rather than simply "permits"—to help ensure that pro se inmates are aware that a court will not necessarily forgive a failure to provide the declaration initially.

### **Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal**

#### **(a) Filing the Notice of Appeal.**

**(1) *In General.*** An appeal from a judgment, order, or decree of a bankruptcy court to a district court or BAP under 28 U.S.C. §158(a)(1) or (a)(2) may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002.

**(2) *Effect of Not Taking Other Steps.*** An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal.

**(3) *Contents.*** The notice of appeal must:

**(A)** conform substantially to the appropriate Official Form;

**(B)** be accompanied by the judgment, order, or decree, or the part of it, being appealed; and

**(C)** be accompanied by the prescribed fee.

**(4) *Additional Copies.*** If requested to do so, the appellant must furnish the bankruptcy clerk with enough copies of the notice to enable the clerk to comply with subdivision (c).

#### **(b) Joint or Consolidated Appeals.**

**(1) *Joint Notice of Appeal.*** When two or more parties are entitled to appeal from a judgment, order, or decree of a bankruptcy court and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

**(2) *Consolidating Appeals.*** When parties have separately filed timely notices of appeal, the district court or BAP may join or consolidate the appeals.

#### **(c) Serving the Notice of Appeal.**

**(1) *Serving Parties and Transmitting to the United States Trustee.*** The bankruptcy clerk must serve the notice of appeal on counsel of record for each party to the appeal, excluding the appellant, and transmit it to the United States trustee. If a party is proceeding pro se, the clerk must send the notice of appeal to the party's last known address. The clerk must note, on each copy, the date when the notice of appeal was filed.

**(2) *Effect of Failing to Serve or Transmit Notice.*** The bankruptcy clerk's failure to serve notice on a party or transmit notice to the United States trustee does not affect the validity of the appeal.

**(3) *Noting Service on the Docket.*** The clerk must note on the docket the names of the parties served and the date and method of the service.

(d) Transmitting the Notice of Appeal to the District Court or BAP; Docketing the Appeal.

(1) *Transmitting the Notice.* The bankruptcy clerk must promptly transmit the notice of appeal to the BAP clerk if a BAP has been established for appeals from that district and the appellant has not elected to have the district court hear the appeal. Otherwise, the bankruptcy clerk must promptly transmit the notice to the district clerk.

(2) *Docketing in the District Court or BAP.* Upon receiving the notice of appeal, the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary.

(Added Apr. 25, 2014, eff. Dec. 1, 2014.)

#### PRIOR RULE

A prior Rule 8003, Apr. 25, 1983, eff. Aug. 1, 1983, as amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009, related to leave to appeal, prior to revision of Part VIII, Apr. 25, 2014, eff. Dec. 1, 2014.

#### COMMITTEE NOTES ON RULES—2014

This rule is derived from several former Bankruptcy Rule and Appellate Rule provisions. It addresses appeals as of right, joint and consolidated appeals, service of the notice of appeal, and the timing of the docketing of an appeal in the district court or BAP.

Subdivision (a) incorporates, with stylistic changes, much of the content of former Rule 8001(a) regarding the taking of an appeal as of right under 28 U.S.C. § 158(a)(1) or (2). The rule now requires that the judgment, order, or decree being appealed be attached to the notice of appeal.

Subdivision (b), which is an adaptation of Fed. App.P. 3(b), permits the filing of a joint notice of appeal by multiple appellants that have sufficiently similar interests that their joinder is practicable. It also allows the district court or BAP to consolidate appeals taken separately by two or more parties.

Subdivision (c) is derived from former Rule 8004 and F.R.App.P. 3(d). Under Rule 8001(c), the former rule's requirement that service of the notice of appeal be accomplished by mailing is generally modified to require that the bankruptcy clerk serve counsel by electronic means. Service on pro se parties must be made by sending the notice to the address most recently provided to the court.

Subdivision (d) modifies the provision of former Rule 8007(b), which delayed the docketing of an appeal by the district court or BAP until the record was complete and the bankruptcy clerk transmitted it. The new provision, adapted from F.R.App.P. 3(d) and 12(a), requires the bankruptcy clerk to promptly transmit the notice of appeal to the clerk of the district court or BAP. Upon receipt of the notice of appeal, the district or BAP clerk must docket the appeal. Under this procedure, motions filed in the district court or BAP prior to completion and transmission of the record can generally be placed on the docket of an already pending appeal.

*Changes Made After Publication and Comment.* In subdivision (d)(2), the direction for docketing a bankruptcy appeal was changed to reflect the fact that many bankruptcy appeals have dual titles—the bankruptcy case itself and the adversary proceeding that is the subject of the appeal. Stylistic changes were made to subdivision (c)(1). Conforming changes were made to the Committee Note.

### Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal

**(a) Notice of Appeal and Motion for Leave to Appeal.** To appeal from an interlocutory order or decree of a bankruptcy court under 28 U.S.C. §158(a)(3), a party must file with the bankruptcy clerk a notice of appeal as prescribed by Rule 8003(a). The notice must:

- (1)** be filed within the time allowed by Rule 8002;
- (2)** be accompanied by a motion for leave to appeal prepared in accordance with subdivision (b); and
- (3)** unless served electronically using the court's transmission equipment, include proof of service in accordance with Rule 8011(d).

**(b) Contents of the Motion; Response.**

**(1) Contents.** A motion for leave to appeal under 28 U.S.C. §158(a)(3) must include the following:

- (A)** the facts necessary to understand the question presented;
- (B)** the question itself;
- (C)** the relief sought;
- (D)** the reasons why leave to appeal should be granted; and
- (E)** a copy of the interlocutory order or decree and any related opinion or memorandum.

**(2) Response.** A party may file with the district or BAP clerk a response in opposition or a cross-motion within 14 days after the motion is served.

**(c) Transmitting the Notice of Appeal and the Motion; Docketing the Appeal; Determining the Motion.**

**(1) Transmitting to the District Court or BAP.** The bankruptcy clerk must promptly transmit the notice of appeal and the motion for leave to the BAP clerk if a BAP has been established for appeals from that district and the appellant has not elected to have the district court hear the appeal. Otherwise, the bankruptcy clerk must promptly transmit the notice and motion to the district clerk.

**(2) Docketing in the District Court or BAP.** Upon receiving the notice and motion, the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary.

**(3) Oral Argument Not Required.** The motion and any response or cross-motion are submitted without oral argument unless the district court or BAP orders otherwise.

**(d) Failure to File a Motion With a Notice of Appeal.** If an appellant timely files a notice of appeal under this rule but does not include a motion for leave, the district court or BAP may order the appellant to file a motion for leave, treat the notice of appeal as a motion for leave and either grant or deny it. If the court orders that a motion for leave be filed, the appellant must do so within 14 days after the order is entered, unless the order provides otherwise.

**(e) Direct Appeal to a Court of Appeals.** If leave to appeal an interlocutory order or decree is required under 28 U.S.C. §158(a)(3), an authorization of a direct appeal by the court of appeals under 28 U.S.C. §158(d)(2) satisfies the requirement.

(Added Apr. 25, 2014, eff. Dec. 1, 2014.)

#### **PRIOR RULE**

A prior Rule 8004, Apr. 25, 1983, eff. Aug. 1, 1983, as amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991, related to service of the notice of appeal, prior to revision of Part VIII, Apr. 25, 2014, eff. Dec. 1, 2014.

#### **COMMITTEE NOTES ON RULES—2014**

This rule is derived from former Rules 8001(b) and 8003 and F.R.App.P. 5. It retains the practice for interlocutory bankruptcy appeals of requiring a notice of appeal to be filed along with a motion for leave to appeal. Like current Rule 8003, it alters the timing of the docketing of the appeal in the district court or BAP.

Subdivision (a) requires a party seeking leave to appeal under 28 U.S.C. §158(a)(3) to file with the bankruptcy clerk both a notice of appeal and a motion for leave to appeal.

Subdivision (b) prescribes the contents of the motion, retaining the requirements of former Rule 8003(a). It also continues to allow another party to file a cross-motion or response to the appellant's motion. Because of the prompt docketing of the appeal under the current rule, the cross-motion or response must be filed in the district court or BAP, rather than in the bankruptcy court as the former rule required.

Subdivision (c) requires the bankruptcy clerk to transmit promptly to the district court or BAP the notice of appeal and the motion for leave to appeal. Upon receipt of the notice and the motion, the district or BAP clerk must docket the appeal. Unless the district court or BAP orders otherwise, no oral argument will be held on the motion.

Subdivision (d) retains the provisions of former Rule 8003(c). It provides that if the appellant timely files a notice of appeal, but fails to file a motion for leave to appeal, the court can either direct that a motion be filed or treat the notice of appeal as the motion and either grant or deny leave.

Subdivision (e), like former Rule 8003(d), treats the authorization of a direct appeal by the court of appeals as a grant of leave to appeal under 28 U.S.C. §158(a)(3) if the district court or BAP has not already granted leave. Thus, a separate order granting leave to appeal is not required. If the court of appeals grants permission to appeal, the record must be assembled and transmitted in accordance with Rules 8009 and 8010.

*Changes Made After Publication and Comment.* In subdivision (c)(2), the direction for docketing a bankruptcy appeal was changed to reflect the fact that many bankruptcy appeals have dual titles—the bankruptcy case itself and the adversary proceeding that is the subject of the appeal. As published, subdivision (c)(3) stated that the court must dismiss the appeal if the motion for leave to appeal is denied. That sentence was deleted.

## **Rule 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP**

**(a) Filing of a Statement of Election.** To elect to have an appeal heard by the district court, a party must:

- (1)** file a statement of election that conforms substantially to the appropriate Official Form; and
- (2)** do so within the time prescribed by 28 U.S.C. §158(c)(1).

**(b) Transmitting the Documents Related to the Appeal.** Upon receiving an appellant's timely statement of election, the bankruptcy clerk must transmit to the district clerk all documents related to the appeal. Upon receiving a timely statement of election by a party other than the appellant, the BAP clerk must transmit to the district clerk all documents related to the appeal and notify the bankruptcy clerk of the transmission.

**(c) Determining the Validity of an Election.** A party seeking a determination of the validity of an election must file a motion in the court where the appeal is then pending. The motion must be filed within 14 days after the statement of election is filed.

**(d) Motion for Leave Without a Notice of Appeal—Effect on the Timing of an Election.** If an appellant moves for leave to appeal under Rule 8004 but fails to file a separate notice of appeal with the motion, the motion must be treated as a notice of appeal for purposes of determining the timeliness of a statement of election.

(Added Apr. 25, 2014, eff. Dec. 1, 2014.)

## PRIOR RULE

A prior Rule 8005, Apr. 25, 1983, eff. Aug. 1, 1983, as amended Mar. 30, 1987, eff. Aug. 1, 1987, related to stay pending appeal, prior to revision of Part VIII, Apr. 25, 2014, eff. Dec. 1, 2014.

## COMMITTEE NOTES ON RULES—2014

This rule, which implements 28 U.S.C. §158(c)(1), is derived from former Rule 8001(e). It applies only in districts in which an appeal to a BAP is authorized.

As the former rule required, subdivision (a) provides that an appellant that elects to have a district court, rather than a BAP, hear its appeal must file with the bankruptcy clerk a statement of election when it files its notice of appeal. The statement must conform substantially to the appropriate Official Form. For appellants, that statement is included in the Notice of Appeal Official Form. If a BAP has been established for appeals from the bankruptcy court and the appellant does not file a timely statement of election, any other party that elects to have the district court hear the appeal must file a statement of election with the BAP clerk no later than 30 days after service of the notice of appeal.

Subdivision (b) requires the bankruptcy clerk to transmit all appeal documents to the district clerk if the appellant files a timely statement of election. If the appellant does not make that election, the bankruptcy clerk must transmit those documents to the BAP clerk. Upon a timely election by any other party, the BAP clerk must promptly transmit the appeal documents to the district clerk and notify the bankruptcy clerk that the appeal has been transferred.

Subdivision (c) provides a new procedure for the resolution of disputes regarding the validity of an election. A motion seeking the determination of the validity of an election must be filed no later than 14 days after the statement of election is filed. Nothing in this rule prevents a court from determining the validity of an election on its own motion.

Subdivision (d) provides that, in the case of an appeal by leave, if the appellant files a motion for leave to appeal but fails to file a notice of appeal, the filing and service of the motion will be treated for timing purposes under this rule as the filing and service of the notice of appeal.

*Changes Made After Publication and Comment.* In subdivision (b), a requirement was added that the BAP clerk notify the bankruptcy clerk if an appeal is transferred from the BAP to the district court upon the election of an appellee. Conforming and clarifying changes were made to the Committee Note.

## Rule 8006. Certifying a Direct Appeal to the Court of Appeals

**(a) Effective Date of a Certification.** A certification of a judgment, order, or decree of a bankruptcy court for direct review in a court of appeals under 28 U.S.C. §158(d)(2) is effective when:

- (1) the certification has been filed;
- (2) a timely appeal has been taken under Rule 8003 or 8004; and
- (3) the notice of appeal has become effective under Rule 8002.

**(b) Filing the Certification.** The certification must be filed with the clerk of the court where the matter is pending. For purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the effective date under Rule 8002 of the first notice of appeal from the judgment, order, or decree for which direct review is sought. A matter is pending in the district court or BAP thereafter.

**(c) Joint Certification by All Appellants and Appellees.**

**(1) How Accomplished.** A joint certification by all the appellants and appellees under 28 U.S.C. §158(d)(2)(A) must be made by using the appropriate Official Form. The parties may

supplement the certification with a short statement of the basis for the certification, which may include the information listed in subdivision (f)(2).

**(2) *Supplemental Statement by the Court.*** Within 14 days after the parties' certification, the bankruptcy court or the court in which the matter is then pending may file a short supplemental statement about the merits of the certification.

**(d) The Court That May Make the Certification.** Only the court where the matter is pending, as provided in subdivision (b), may certify a direct review on request of parties or on its own motion.

**(e) Certification on the Court's Own Motion.**

**(1) *How Accomplished.*** A certification on the court's own motion must be set forth in a separate document. The clerk of the certifying court must serve it on the parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1). The certification must be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(2)(A)–(D).

**(2) *Supplemental Statement by a Party.*** Within 14 days after the court's certification, a party may file with the clerk of the certifying court a short supplemental statement regarding the merits of certification.

**(f) Certification by the Court on Request.**

**(1) *How Requested.*** A request by a party for certification that a circumstance specified in 28 U.S.C. §158(d)(2)(A)(i)–(iii) applies—or a request by a majority of the appellants and a majority of the appellees—must be filed with the clerk of the court where the matter is pending within 60 days after the entry of the judgment, order, or decree.

**(2) *Service and Contents.*** The request must be served on all parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1), and it must include the following:

**(A)** the facts necessary to understand the question presented;

**(B)** the question itself;

**(C)** the relief sought;

**(D)** the reasons why the direct appeal should be allowed, including which circumstance specified in 28 U.S.C. §158(d)(2)(A)(i)–(iii) applies; and

**(E)** a copy of the judgment, order, or decree and any related opinion or memorandum.

**(3) *Time to File a Response or a Cross-Request.*** A party may file a response to the request within 14 days after the request is served, or such other time as the court where the matter is pending allows. A party may file a cross-request for certification within 14 days after the request is served, or within 60 days after the entry of the judgment, order, or decree, whichever occurs first.

**(4) *Oral Argument Not Required.*** The request, cross-request, and any response are submitted without oral argument unless the court where the matter is pending orders otherwise.

**(5) *Form and Service of the Certification.*** If the court certifies a direct appeal in response to the request, it must do so in a separate document. The certification must be served on the parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1).

**(g) Proceeding in the Court of Appeals Following a Certification.** Within 30 days after the date the certification becomes effective under subdivision (a), a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk in accordance with F.R.App.P. 6(c).

(Added Apr. 25, 2014, eff. Dec. 1, 2014; amended Apr. 26, 2018, eff. Dec. 1, 2018.)

#### PRIOR RULE

A prior Rule 8006, Apr. 25, 1983, eff. Aug. 1, 1983, as amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 1994, eff. Aug. 1, 1994; Mar. 26, 2009, eff. Dec.

1, 2009, related to record and issues on appeal, prior to revision of Part VIII, Apr. 25, 2014, eff. Dec. 1, 2014.

#### **COMMITTEE NOTES ON RULES—2014**

This rule is derived from former Rule 8001(f), and it provides the procedures for the certification of a direct appeal of a judgment, order, or decree of a bankruptcy court to the court of appeals under 28 U.S.C. §158(d)(2). Once a case has been certified in the bankruptcy court, the district court, or the BAP for direct appeal and a request for permission to appeal has been timely filed with the circuit clerk, the Federal Rules of Appellate Procedure govern further proceedings in the court of appeals.

Subdivision (a), like the former rule, requires that an appeal be properly taken—now under Rule 8003 or 8004—before a certification for direct review in the court of appeals takes effect. This rule requires the timely filing of a notice of appeal under Rule 8002 and accounts for the delayed effectiveness of a notice of appeal under the circumstances specified in that rule. Ordinarily, a notice of appeal is effective when it is filed in the bankruptcy court. Rule 8002, however, delays the effectiveness of a notice of appeal when (1) it is filed after the announcement of a decision or order but prior to the entry of the judgment, order, or decree, or (2) it is filed after the announcement or entry of a judgment, order, or decree but before the bankruptcy court disposes of certain postjudgment motions.

When the bankruptcy court enters an interlocutory order or decree that is appealable under 28 U.S.C. §158(a)(3), certification for direct review in the court of appeals may take effect before the district court or BAP grants leave to appeal. The certification is effective when the actions specified in subdivision (a) have occurred. Rule 8004(c) provides that if the court of appeals grants permission to take a direct appeal before leave to appeal, an interlocutory ruling has been granted, the authorization by the court of appeals is treated as the granting of leave to appeal.

Subdivision (b) provides that a certification must be filed in the court where the matter is pending, as determined by this subdivision. This provision modifies the former rule. Because of the prompt docketing of appeals in the district court or BAP under Rules 8003 and 8004, a matter is deemed—for purposes of this rule only—to remain pending in the bankruptcy court for 30 days after the effective date of the notice of appeal. This provision will in appropriate cases give the bankruptcy judge, who will be familiar with the matter being appealed, an opportunity to decide whether certification for direct review is appropriate. Similarly, subdivision (d) provides that only the court where the matter is pending according to subdivision (b) may make a certification on its own motion or on the request of one or more parties.

Section 158(d)(2) provides three different ways in which an appeal may be certified for direct review. Implementing these options, the rule provides in subdivision (c) for the joint certification by all appellants and appellees; in subdivision (e) for the bankruptcy court's, district court's, or BAP's certification on its own motion; and in subdivision (f) for the bankruptcy court's, district court's, or BAP's certification on request of a party or a majority of appellants and a majority of appellees.

Subdivision (g) requires that, once a certification for direct review is made, a request to the court of appeals for permission to take a direct appeal to that court must be filed with the clerk of the court of appeals no later than 30 days after the effective date of the certification. Federal Rule of Appellate Procedure 6(c), which incorporates all of F.R.App.P. 5 except subdivision (a)(3), prescribes the procedure for requesting the permission of the court of appeals and governs proceedings that take place thereafter in that court.

*Changes Made After Publication and Comment.* In subdivisions (b) and (g), cross-references were added. In subdivision (f)(4), the statement regarding the inapplicability of Rule 9014 was deleted as unnecessary. A clarifying change was made to the first paragraph of the Committee Note.

#### COMMITTEE NOTES ON RULES—2018 AMENDMENT

Subdivision (c) is amended to provide authority for the court to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all of the parties to the appeal. It is a counterpart to subdivision (e)(2), which allows a party to file a similar statement when the court certifies direct review on the court's own motion.

The bankruptcy court may file a supplemental statement within 14 days after the certification, even if the appeal is no longer pending before it according to subdivision (b). If the appeal is pending in the district court or BAP during that 14-day period, the appellate court is authorized to file a statement. In all cases, the filing of a statement by the court is discretionary.

#### REFERENCES IN TEXT

The Federal Rules of Appellate Procedure, referred to in subd. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings

**(a) Initial Motion in the Bankruptcy Court.**

**(1) *In General.*** Ordinarily, a party must move first in the bankruptcy court for the following relief:

- (A)** a stay of a judgment, order, or decree of the bankruptcy court pending appeal;
- (B)** the approval of a bond or other security provided to obtain a stay of judgment;
- (C)** an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or
- (D)** the suspension or continuation of proceedings in a case or other relief permitted by subdivision (e).

**(2) *Time to File.*** The motion may be made either before or after the notice of appeal is filed.

**(b) Motion in the District Court, the BAP, or the Court of Appeals on Direct Appeal.**

**(1) *Request for Relief.*** A motion for the relief specified in subdivision (a)(1)—or to vacate or modify a bankruptcy court's order granting such relief—may be made in the court where the appeal is pending.

**(2) *Showing or Statement Required.*** The motion must:

- (A)** show that moving first in the bankruptcy court would be impracticable; or
- (B)** if a motion was made in the bankruptcy court, either state that the court has not yet ruled on the motion, or state that the court has ruled and set out any reasons given for the ruling.

**(3) *Additional Content.*** The motion must also include:

- (A)** the reasons for granting the relief requested and the facts relied upon;
- (B)** affidavits or other sworn statements supporting facts subject to dispute; and
- (C)** relevant parts of the record.

**(4) *Serving Notice.*** The movant must give reasonable notice of the motion to all parties.

**(c) Filing a Bond or Other Security.** The district court, BAP, or court of appeals may condition relief on filing a bond or other security with the bankruptcy court.

**(d) Bond or Other Security for a Trustee or the United States.** The court may require a trustee to file a bond or other security when the trustee appeals. A bond or other security is not required when an appeal is taken by the United States, its officer, or its agency or by direction of any department of the federal government.



(e) Continuation of Proceedings in the Bankruptcy Court. Despite Rule 7062 and subject to the authority of the district court, BAP, or court of appeals, the bankruptcy court may:

(1) suspend or order the continuation of other proceedings in the case; or

(2) issue any other appropriate orders during the pendency of an appeal to protect the rights of all parties in interest.

(Added Apr. 25, 2014, eff. Dec. 1, 2014; amended Apr. 26, 2018, eff. Dec. 1, 2018.)

#### **PRIOR RULE**

A prior Rule 8007, Apr. 25, 1983, eff. Aug. 1, 1983, as amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991, related to completion and transmission of the record and docketing of the appeal, prior to revision of Part VIII, Apr. 25, 2014, eff. Dec. 1, 2014.

#### **COMMITTEE NOTES ON RULES—2014**

This rule is derived from former Rule 8005 and F.R.App.P. 8. It now applies to direct appeals in courts of appeals.

Subdivision (a), like the former rule, requires a party ordinarily to seek relief pending an appeal in the bankruptcy court. Subdivision (a)(1) expands the list of relief enumerated in F.R.App.P. 8(a)(1) to reflect bankruptcy practice. It includes the suspension or continuation of other proceedings in the bankruptcy case, as authorized by subdivision (e). Subdivision (a)(2) clarifies that a motion for a stay pending appeal, approval of a supersedeas bond, or any other relief specified in paragraph (1) may be made in the bankruptcy court before or after the filing of a notice of appeal.

Subdivision (b) authorizes a party to seek the relief specified in (a)(1), or the vacation or modification of the granting of such relief, by means of a motion filed in the court where the appeal is pending—district court, BAP, or the court of appeals on direct appeal. Accordingly, a notice of appeal need not be filed with respect to a bankruptcy court's order granting or denying such a motion. The motion for relief in the district court, BAP, or court of appeals must state why it was impracticable to seek relief initially in the bankruptcy court, if a motion was not filed there, or why the bankruptcy court denied the relief sought.

Subdivisions (c) and (d) retain the provisions of the former rule that permit the district court or BAP—and now the court of appeals—to condition the granting of relief on the posting of a bond by the appellant, except when the party is a federal government entity. Rule 9025 governs proceedings against sureties.

Subdivision (e) retains the provision of the former rule that authorizes the bankruptcy court to decide whether to suspend or allow the continuation of other proceedings in the bankruptcy case while the matter for which a stay has been sought is pending on appeal.

*Changes Made After Publication and Comment.* The clause "or where it will be taken" was deleted in subdivision (b)(1). Stylistic changes were made to the titles of subdivisions (b) and (e) and in subdivision (e)(1). A discussion of subdivision (e) was added to the Committee Note.

#### **COMMITTEE NOTES ON RULES—2018 AMENDMENT**

The amendments to subdivisions (a)(1)(B), (c), and (d) conform this rule with the amendment of Rule 62 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7062. Rule 62 formerly required a party to provide a "supersedeas bond" to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b) allows a party to obtain a stay by providing a "bond or other security."

### **Rule 8008. Indicative Rulings**

**(a) Relief Pending Appeal.** If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may:

**(1)** defer considering the motion;

**(2)** deny the motion; or

**(3)** state that the court would grant the motion if the court where the appeal is pending remands for that purpose, or state that the motion raises a substantial issue.

**(b) Notice to the Court Where the Appeal Is Pending.** The movant must promptly notify the clerk of the court where the appeal is pending if the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue.

**(c) Remand After an Indicative Ruling.** If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, the district court or BAP may remand for further proceedings, but it retains jurisdiction unless it expressly dismisses the appeal. If the district court or BAP remands but retains jurisdiction, the parties must promptly notify the clerk of that court when the bankruptcy court has decided the motion on remand.

(Added Apr. 25, 2014, eff. Dec. 1, 2014.)

#### **PRIOR RULE**

A prior Rule 8008, Apr. 25, 1983, eff. Aug. 1, 1983, as amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 23, 1996, eff. Dec. 1, 1996, related to filing and service, prior to revision of Part VIII, Apr. 25, 2014, eff. Dec. 1, 2014.

#### **COMMITTEE NOTES ON RULES—2014**

This rule is an adaptation of F.R.Civ.P. 62.1 and F.R.App.P. 12.1. It provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue. The rule does not attempt to define the circumstances in which an appeal limits or defeats the bankruptcy court's authority to act in the face of a pending appeal. In contrast, Rule 8002(b) identifies motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before the last such motion is resolved. In those circumstances, the bankruptcy court has authority to resolve the motion without resorting to the indicative ruling procedure.

Subdivision (b) requires the movant to notify the court where an appeal is pending if the bankruptcy court states that it would grant the motion or that it raises a substantial issue. This provision applies to appeals pending in the district court, the BAP, or the court of appeals.

Federal Rules of Appellate Procedure 6 and 12.1 govern the procedure in the court of appeals following notification of the bankruptcy court's indicative ruling.

Subdivision (c) of this rule governs the procedure in the district court or BAP upon notification that the bankruptcy court has issued an indicative ruling. The district court or BAP may remand to the bankruptcy court for a ruling on the motion for relief. The district court or BAP may also remand all proceedings, thereby terminating the initial appeal, if it expressly states that it is dismissing the appeal. It should do so, however, only when the appellant has stated clearly its intention to abandon the appeal. Otherwise, the district court or BAP may remand for the purpose of ruling on the motion, while retaining jurisdiction to proceed with the appeal after the bankruptcy court rules, provided that the appeal is not then moot and a party wishes to proceed.

*Changes Made After Publication and Comment.* No changes were made after publication and comment.

## **Rule 8009. Record on Appeal; Sealed Documents**

**(a)** Designating the Record on Appeal; Statement of the Issues.

**(1) Appellant.**

**(A)** The appellant must file with the bankruptcy clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented.

**(B)** The appellant must file and serve the designation and statement within 14 days after:

**(i)** the appellant's notice of appeal as of right becomes effective under Rule 8002; or

**(ii)** an order granting leave to appeal is entered.

A designation and statement served prematurely must be treated as served on the first day on which filing is timely.

**(2) Appellee and Cross-Appellant.** Within 14 days after being served, the appellee may file with the bankruptcy clerk and serve on the appellant a designation of additional items to be included in the record. An appellee who files a cross-appeal must file and serve a designation of additional items to be included in the record and a statement of the issues to be presented on the cross-appeal.

**(3) Cross-Appellee.** Within 14 days after service of the cross-appellant's designation and statement, a cross-appellee may file with the bankruptcy clerk and serve on the cross-appellant a designation of additional items to be included in the record.

**(4) Record on Appeal.** The record on appeal must include the following:

- docket entries kept by the bankruptcy clerk;
- items designated by the parties;
- the notice of appeal;
- the judgment, order, or decree being appealed;
- any order granting leave to appeal;
- any certification required for a direct appeal to the court of appeals;
- any opinion, findings of fact, and conclusions of law relating to the issues on appeal, including transcripts of all oral rulings;
- any transcript ordered under subdivision (b);
- any statement required by subdivision (c); and
- any additional items from the record that the court where the appeal is pending orders.

**(5) Copies for the Bankruptcy Clerk.** If paper copies are needed, a party filing a designation of items must provide a copy of any of those items that the bankruptcy clerk requests. If the party fails to do so, the bankruptcy clerk must prepare the copy at the party's expense.

**(b) Transcript of Proceedings.**

**(1) Appellant's Duty to Order.** Within the time period prescribed by subdivision (a)(1), the appellant must:

**(A)** order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or

**(B)** file with the bankruptcy clerk a certificate stating that the appellant is not ordering a transcript.

**(2) Cross-Appellant's Duty to Order.** Within 14 days after the appellant files a copy of the transcript order or a certificate of not ordering a transcript, the appellee as cross-appellant must:

**(A)** order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such additional parts of the proceedings as the cross-appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or

**(B)** file with the bankruptcy clerk a certificate stating that the cross-appellant is not ordering a transcript.

## PART IX—GENERAL PROVISIONS

### Rule 9001. General Definitions

The definitions of words and phrases in §§101, 902, 1101, and 1502 of the Code, and the rules of construction in §102, govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:

- (1) "Bankruptcy clerk" means a clerk appointed pursuant to 28 U.S.C. §156(b).
- (2) "Bankruptcy Code" or "Code" means title 11 of the United States Code.
- (3) "Clerk" means bankruptcy clerk, if one has been appointed, otherwise clerk of the district court.
- (4) "Court" or "judge" means the judicial officer before whom a case or proceeding is pending.
- (5) "Debtor." When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: (A) if the debtor is a corporation, "debtor" includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control; (B) if the debtor is a partnership, "debtor" includes any or all of its general partners or, if designated by the court, any other person in control.
- (6) "Firm" includes a partnership or professional corporation of attorneys or accountants.
- (7) "Judgment" means any appealable order.
- (8) "Mail" means first class, postage prepaid.
- (9) "Notice provider" means any entity approved by the Administrative Office of the United States Courts to give notice to creditors under Rule 2002(b)(4).
- (10) "Regular associate" means any attorney regularly employed by, associated with, or counsel to an individual or firm.
- (11) "Trustee" includes a debtor in possession in a chapter 11 case.
- (12) "United States trustee" includes an assistant United States trustee and any designee of the United States trustee.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 23, 2010, eff. Dec. 1, 2010.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The terms "bankruptcy clerk" and "clerk" have been defined to reflect that unless otherwise stated, for the purpose of these rules, the terms are meant to identify the court officer for the bankruptcy records. If a bankruptcy clerk is appointed, all filings are made with the bankruptcy clerk. If one has not been appointed, all filings are with the clerk of the district court. Rule 5005.

The rule is also amended to include a definition of "court or judge". Since a case or proceeding may be before a bankruptcy judge or a judge of the district court, "court or judge" is defined to mean the judicial officer before whom the case or proceeding is pending.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Section 582 of title 28 provides that the Attorney General may appoint one or more assistant United States trustees in any region when the public interest so requires. This rule is amended to clarify that an assistant United States trustee, as well as any designee of the United States trustee, is included within the meaning of "United States trustee" in the rules.

#### COMMITTEE NOTES ON RULES—2005 AMENDMENT

The rule is amended to add the definition of a notice provider and to renumber the final three definitions in the rule. A notice provider is an entity approved by the Administrative Office of the

United States Courts to enter into agreements with entities to give notice to those entities in the form and manner agreed to by those parties. The new definition supports the amendment to Rule 2002(g)(4) that authorizes a notice provider to give notices under Rule 2002.

Many entities conduct business on a national scale and receive vast numbers of notices in bankruptcy cases throughout the country. Those entities can agree with a notice provider to receive their notices in a form and at an address or addresses that the creditor and notice provider agree upon. There are processes currently in use that provide substantial assurance that notices are not misdirected. Any notice provider would have to demonstrate to the Administrative Office of the United States Courts that it could provide the service in a manner that ensures the proper delivery of notice to creditors. Once the Administrative Office of the United States Courts approves the notice provider to enter into agreements with creditors, the notice provider and other entities can establish the relationship that will govern the delivery of notices in cases as provided in Rule 2002(g)(4).

*Changes Made After Publication and Comment.* No changes since publication.

#### **COMMITTEE NOTES ON RULES—2010 AMENDMENT**

The rule is amended to add §1502 of the Code to the list of definitional provisions that are applicable to the Rules. That section was added to the Code by the 2006 amendments.

*Changes Made After Publication.* No changes since publication.

#### **REFERENCES IN TEXT**

The Bankruptcy Act of 1898 as amended, referred to in parts (1) and (2), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. Sections 1(10) and 2a of this Act were classified to sections 1(10) and 11(a), respectively, of former Title 11. The Act was repealed effective October 1, 1979, by Pub. L. 95-598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

### **Rule 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under the Code**

The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meanings indicated unless they are inconsistent with the context:

(1) "Action" or "civil action" means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter.

(2) "Appeal" means an appeal as provided by 28 U.S.C. §158.

(3) "Clerk" or "clerk of the district court" means the court officer responsible for the bankruptcy records in the district.

(4) "District Court," "trial court," "court," "district judge," or "judge" means bankruptcy judge if the case or proceeding is pending before a bankruptcy judge.

(5) "Judgment" includes any order appealable to an appellate court.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993.)

#### **REFERENCES IN TEXT**

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT**

This rule is revised to include the words "district judge" in anticipation of amendments to the Federal Rules of Civil Procedure.

### **Rule 9003. Prohibition of Ex Parte Contacts**

(a) General Prohibition. Except as otherwise permitted by applicable law, any examiner, any party in interest, and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding.

(b) United States Trustee. Except as otherwise permitted by applicable law, the United States trustee and assistants to and employees or agents of the United States trustee shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding. This rule does not preclude communications with the court to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

This rule regulates the actions of parties in interest and their attorneys or others employed by parties in interest. This regulation of the conduct of parties in interest and their representative is designed to insure that the bankruptcy system operates fairly and that no appearance of unfairness is created. See H. Rep. No. 95-595, 95th Cong., 1st Sess. 95 et seq. (1977).

This rule is not a substitute for or limitation of any applicable canon of professional responsibility or judicial conduct. See, e.g., Canon 7, EC7-25, Discipline, Rule 7-110(B) of the Code of Professional Responsibility: "Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party;" and Canon 3A(4) of the Code of Judicial Conduct: "A judge should . . . neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding."

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

This rule is amended to apply to both the bankruptcy judges and the district judges of the district.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

*Subdivision (a)* is amended to extend to examiners the prohibition on ex parte meetings and communications with the court.

*Subdivision (b)* is derived from Rule X-1010.

### **Rule 9004. General Requirements of Form**

(a) Legibility; Abbreviations. All petitions, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.

(b) Caption. Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1983**

*Subdivision (b)*. Additional requirements applicable to the caption for a petition are found in Rule 1005, to the caption for notices to creditors in Rule 2002(m), and to the caption for a pleading or other paper filed in an adversary proceeding in Rule 7010. Failure to comply with this or any

other rule imposing a merely formal requirement does not ordinarily result in the loss of rights. See Rule 9005.

### **Rule 9005. Harmless Error**

Rule 61 F.R.Civ.P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.

#### **REFERENCES IN TEXT**

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### **Rule 9005.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention**

Rule 5.1 F.R.Civ.P. applies in cases under the Code.

(Added Apr. 30, 2007, eff. Dec. 1, 2007.)

#### **COMMITTEE NOTES ON RULES—2007**

The rule is added to adopt the new rule added to the Federal Rules of Civil Procedure. The new Civil Rule replaces Rule 24(c) F. R. Civ. P., so the cross reference to Civil Rule 24 contained in Rule 7024 is no longer sufficient to bring the provisions of new Civil Rule 5.1 into adversary proceedings. This rule also makes Civil Rule 5.1 applicable to contested matters and other proceedings within the bankruptcy case.

*Changes After Publication.* No changes were made after publication.

#### **REFERENCES IN TEXT**

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

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

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, then continue the period until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 9006(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 9006(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or order in the case, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located. (In this rule, "state" includes the District of Columbia and any United States commonwealth or territory.)

(b) *Enlargement.*

(1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) *Enlargement Not Permitted.* The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.

(3) *Enlargement Governed By Other Rules.* The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules. In addition, the court may enlarge the time to file the statement required under Rule 1007(b)(7), and to file schedules and statements in a small business case under §1116(3) of the Code, only to the extent and under the conditions stated in Rule 1007(c).

(c) *Reduction.*

(1) *In General.* Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) *Reduction Not Permitted.* The court may not reduce the time for taking action under Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, and 9033(b). In addition, the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7).

(d) *Motion Papers.* A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion. Except as otherwise provided in Rule 9023, any written response shall be served not later than one day before the hearing, unless the court permits otherwise.

(e) *Time of Service.* Service of process and service of any paper other than process or of notice by mail is complete on mailing.



(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).

(g) Grain Storage Facility Cases. This rule shall not limit the court's authority under §557 of the Code to enter orders governing procedures in cases in which the debtor is an owner or operator of a grain storage facility.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 25, 1989, eff. Aug. 1, 1989; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 28, 2016, eff. Dec. 1, 2016.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

*Subdivision (a).* This rule is an adaptation of Rule 6 F.R.Civ.P. It governs the time for acts to be done and proceedings to be had in cases under the Code and any litigation arising therein.

*Subdivision (b)* is patterned after Rule 6(b) F.R.Civ.P. and Rule 2(b) F.R.App.P.

Paragraph (1) of this subdivision confers on the court discretion generally to authorize extensions of time for doing acts required or allowed by these rules or orders of court. The exceptions to this general authority to extend the time are contained in paragraphs (2) and (3).

In the interest of prompt administration of bankruptcy cases certain time periods may not be extended. Paragraph (2) lists the rules which establish time periods which may not be extended: Rule 1007(d), time for filing a list of 20 largest creditors; Rule 1017(b)(3), 30 day period for sending notice of dismissal for failure to pay the filing fee; Rule 1019(2), 20 day period for notice of conversion to a chapter 7 case; Rule 2003(a), meeting of creditors not more than 40 days after order for relief; Rule 2003(d), 10 days for filing a motion for resolution of an election dispute; Rule 3014, time for the §1111(b)(2) election; Rule 4001(b), expiration of stay 30 days following the commencement of final hearing; Rule 4002(b), 10 day period to move to amend findings of fact; Rule 9015(f), 20 day period to move for judgment notwithstanding the verdict; Rule 9023, 10 day period to move for a new trial; and Rule 9024, time to move for relief from judgment.

Many rules which establish a time for doing an act also contain a specific authorization and standard for granting an extension of time and, in some cases, limit the length of an extension. In some instances it would be inconsistent with the objective of the rule and sound administration of the case to permit extension under Rule 9006(b)(1), but with respect to the other rules it is appropriate that the power to extend time be supplemented by Rule 9006(b)(1). Unless a rule which contains a specific authorization to extend time is listed in paragraph (3) of this subdivision, an extension of the time may be granted under paragraph (1) of this subdivision. If a rule is included in paragraph (3) an extension may not be granted under paragraph (1). The following rules are listed in paragraph (3): Rule 1006(b)(2), time for paying the filing fee in installments; Rule 3002(c), 90 day period for filing a claim in a chapter 7 or 13 case; Rule 4003(b), 30 days for filing objections to a claim of exemptions; Rule 4004(a), 60 day period to object to a discharge; Rule 4007(b), 60 day period to file a dischargeability complaint; and Rule 8002, 10 days for filing a notice of appeal.

*Subdivision (c).* Paragraph (1) of this subdivision authorizes the reduction of the time periods established by these rules or an order of the court. Excluded from this general authority are the time periods established by the rules referred to in paragraph (2) of the subdivision: Rule 2002 (a) and (b), 20 day and 25 day notices of certain hearings and actions in the case; Rule 2003(a),

meeting of creditors to be not less than 20 days after the order for relief; Rule 3002(c), 90 days for filing a claim in a chapter 7 or 13 case; Rule 3014, time for §1111(b)(2) election; Rule 3015, 10 day period after filing of petition to file a chapter 13 plan; Rule 4003(a), 15 days for a dependent to claim exemptions; Rule 4004(a), 60 day period to object to a discharge; Rule 4007(c), 60 day period to file a dischargeability complaint; and Rule 8002, 10 days for filing a notice of appeal. Reduction of the time periods fixed in the rules referred to in this subdivision would be inconsistent with the purposes of those rules and would cause harmful uncertainty.

*Subdivision (d)* is derived from Rule 6(d) F.R.Civ.P. The reference is to Rule 9023 instead of to Rule 59(c) F.R.Civ.P. because Rule 9023 incorporates Rule 59 F.R.Civ.P. but excepts therefrom motions to reconsider orders allowing and disallowing claims.

*Subdivision (f)* is new and is the same as Rule 6(e) F.R.Civ.P.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT**

*Subdivision (a)* is amended to conform to the 1984 amendments to Rule 6 F.R.Civ.P.

*Subdivision (b)*. The reference to Rule 4001(b) in paragraph (2) is deleted because of the amendments made to Rule 4001. Rule 9033, which is new, contains specific provisions governing the extension of time to file objections to proposed findings of fact and conclusions of law. Rule 9033 is added to the rules referred to in paragraph (3).

*Subdivision (c)*. Rule 4001(b)(2) and (c)(2) provide that a final hearing on a motion to use cash collateral or a motion for authority to obtain credit may be held no earlier than 15 days after the filing of the motion. These two rules are added to paragraph (2) to make it clear that the 15 day period may not be reduced. Rule 9033 is also added to paragraph (2).

*Subdivision (g)* is new. Under §557 of the Code, as enacted by the 1984 amendments, the court is directed to expedite grain storage facility cases. This subdivision makes it clear this rule does not limit the court's authority under §557.

The original Advisory Committee Note to this rule included the 25 day notice period of Rule 2002(b) as a time period which may not be reduced under Rule 9006(c)(2). This was an error.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1989 AMENDMENT**

Prior to 1987, subdivision (a) provided that intermediate weekends and legal holidays would not be counted in the computation of a time period if the prescribed or allowed time was less than 7 days. This rule was amended in 1987 to conform to Fed. R. Civ. P. 6(a) which provides for the exclusion of intermediate weekends and legal holidays if the time prescribed or allowed is less than 11 days. An undesirable result of the 1987 amendment was that 10-day time periods prescribed in the interest of prompt administration of bankruptcy cases were extended to at least 14 calendar days.

As a result of the present amendment, 10-day time periods prescribed or allowed will no longer be extended to at least 14 calendar days because of intermediate weekends and legal holidays.

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

As a result of the 1989 amendment to this rule, the method of computing time under subdivision (a) is not the same as the method of computing time under Rule 6(a) F.R.Civ.P. Subdivision (a) is amended to provide that it governs the computation of time periods prescribed by the Federal Rules of Civil Procedure when the Bankruptcy Rules make a civil rule applicable to a bankruptcy case or proceeding.

*Subdivision (b)(2)* is amended because of the deletion of Rule 1019(2). Reference to Rule 9015(f) is deleted because of the abrogation of Rule 9015 in 1987.

*Subdivision (b)(3)* is amended to limit the enlargement of time regarding dismissal of a chapter 7 case for substantial abuse in accordance with Rule 1017(e).

#### **NOTES OF ADVISORY COMMITTEE ON RULES—1996 AMENDMENT**

Subdivision (c)(2) is amended to conform to the abrogation of Rule 2002(a)(4) and the renumbering of Rule 2002(a)(8) to Rule 2002(a)(7).

*GAP Report on Rule 9006.* No changes since publication, except for a stylistic change.

#### **COMMITTEE NOTES ON RULES—1999 AMENDMENT**

Rule 9006(b)(2) is amended to conform to the abrogation of Rule 1017(b)(3).

*GAP Report on Rule 9006.* The proposed amendment to Rule 9006(b)(2) has been added as a technical change to conform to the abrogation of Rule 1017(b)(3). The proposed amendment to Rule 9006(c)(2), providing that the time under Rule 1019(6) to file a request for payment of an administrative expense after a case is converted to chapter 7 could not be reduced by the court, was deleted. The proposed amendments to Rule 1019(6) have been changed so that the court will fix the time for filing the request for payment. Since the court will fix the time limit, the court should have the power to reduce it. See GAP Report to Rule 1019(6).

#### **COMMITTEE NOTES ON RULES—2001 AMENDMENT**

Rule 5(b) F. R. Civ. P., which is made applicable in summary proceedings by Rule 7005, is being restyled and amended to authorize service by electronic means—or any other means not otherwise authorized under Rule 5(b)—if consent is obtained from the person served. The amendment to Rule 9006(f) is intended to extend the three-day "mail rule" to service under Rule 5(b)(2)(D), including service by electronic means. The three-day rule also will apply to service under Rule 5(b)(2)(C) F. R. Civ. P. when the person served has no known address and the paper is served by leaving a copy with the clerk of the court.

*Changes Made After Publication and Comments.* No changes were made.

#### **COMMITTEE NOTES ON RULES—2005 AMENDMENT**

Rule 9006(f) is amended consistent with a corresponding amendment to Rule 6(e) of the F.R. Civ. P., to clarify the method of counting the number of days to respond after service either by mail or under Civil Rule 5(b)(2)(C) or (D). Three days are added after the prescribed period expires. If, before the application of Rule 9006(f), the prescribed period is less than 8 days, intervening Saturdays, Sundays, and legal holidays are excluded from the calculation under Rule 9006(a). Some illustrations may be helpful.

Under existing Rule 9006(a), assuming that there are no legal holidays and that a response is due in seven days, if a paper is filed on a Monday, the seven day response period commences on Tuesday and concludes on Wednesday of the next week. Adding three days to the end of the period would extend it to Saturday, but because the response period ends on a weekend, the response day would be the following Monday, two weeks after the filing of the initial paper. If the paper is filed on a Tuesday, the seven-day response period would end on the following Thursday, and the response time would also be the following Monday. If the paper is mailed on a Wednesday, the initial seven-day period would expire nine days later on a Friday, but the response would again be due on the following Monday because of Rule 9006(f). If the paper is mailed on a Thursday, however, the seven day period ends on Monday, eleven days after the mailing of the service because of the exclusion of the two intervening Saturdays and Sundays.

The response is due three days later on the following Thursday. If the paper is mailed on a Friday, the seven day period would conclude on a Tuesday, and the response is due three days later on a Friday.

No other change in the system of counting time is intended.

Other changes are stylistic.

*Changes Made After Publication and Comment.* The phrase "would otherwise expire under Rule 9006(a)" was added to the end of the rule to clarify further that the three day extension is to be added to the end of the period that is established under the counting provisions of Rule 9006(a). This also maintains a parallel construction with Civil Rule 6(e) in which the same addition to the rule was made after the public comment period.

#### **COMMITTEE NOTES ON RULES—2008 AMENDMENT**

Subdivision (b)(3) is amended to implement §1116(3) of the Code, as amended by the 2005 amendments, which places specific limits on the extension of time for filing schedules and statements of financial affairs in a small business case.

Subdivisions (b)(3) and (c)(2) are amended to provide that enlargement or reduction of the time to file the statement of completion of a personal financial management course required by Rule 1007(b)(7) are governed by Rule 1007(c). Likewise, the amendment to subdivisions (b)(3) and (c)(2) recognize that the enlargement of time to file a reaffirmation agreement is governed by Rule 4008(a), and that reduction of the time provided under the rule is not permitted.

Other amendments are stylistic.

*Changes Made After Publication.* Subdivision (b)(3) was amended to provide that Rule 9006 does not govern the enlargement of time to file a reaffirmation agreement, the statement required under Rule 1007(b)(7), or the time to file schedules and statements of financial affairs in small business cases. The title of subdivision (b)(3) was also amended to more accurately describe the operation of the provision. Subdivision (c)(2) was amended to recognize that the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7).

#### **COMMITTEE NOTES ON RULES—2009 AMENDMENT**

*Subdivision (a).* Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a Federal Rule of Bankruptcy Procedure, a Federal Rule of Civil Procedure, a statute, a local rule, or a court order. In accordance with Bankruptcy Rule 9029(a), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) "does not apply to situations where the court has established a specific calendar day as a deadline"), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is "no later than November 1, 2007," subdivision (a) does not govern. But if a filing is required to be made "within 10 days" or "within 72 hours," subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. See, e.g., 11 U.S.C. §527(a)(2) (debt relief agencies must

provide a written notice to an assisted person "not later than 3 business days" after providing bankruptcy assistance services).

*Subdivision (a)(1).* New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. See, e.g., Federal Rule of Civil Procedure 60(c)(1) made applicable to bankruptcy cases under Rule 9024. Subdivision (a)(1)(B)'s directive to "count every day" is relevant only if the period is stated in days (not weeks, months, or years).

Under former Rule 9006(a), a period of eight days or more was computed differently than a period of less than eight days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 9006(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results.

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days—including intermediate Saturdays, Sundays, and legal holidays—are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

Where subdivision (a) formerly referred to the "act, event, or default" that triggers the deadline, new subdivision (a) refers simply to the "event" that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than eight days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. See, e.g., Rules 2008 (trustee's duty to notify court of acceptance of the appointment within five days is extended to seven days); 3004(b) (time for filing and service of objection to proposed use, sale or lease of property extended from five days prior to the hearing to seven days prior to the hearing); and 9006(d) (time for giving notice of a hearing extended from five days prior to the hearing to seven days).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. See, e.g., Rules 1007(h) (10-day period to file supplemental schedule for property debtor becomes entitled to acquire after the commencement of the case is extended to 14 days); 3020(e) (10-day stay of order confirming a chapter 11 plan extended to 14 days); 8002(a) (10-day period in which to file notice of appeal extended to 14 days). A 14-day period also has the advantage that the final day falls on the same day of the week as the event that triggered the period—the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting seven-day periods to replace some of the periods set at less than 10 days, 21-day periods to replace 20-day periods, and 28-day periods to replace 25-day periods. Thirty-day and longer periods, however, were generally retained without change.

*Subdivision (a)(2).* New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Bankruptcy Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be "rounded up" to the next whole hour. Subdivision (a)(3) addresses situations when the clerk's office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

*Subdivision (a)(3).* When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk's office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday, or day when the clerk's office is inaccessible.

Subdivision (a)(3)'s extensions apply "[u]nless the court orders otherwise." In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a shorter extension.

The text of the rule no longer refers to "weather or other conditions" as the reason for the inaccessibility of the clerk's office. The reference to "weather" was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw. See, e.g., William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure?*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing. See, e.g., D. Kan. Rule 5.4.11 ("A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.").

*Subdivision (a)(4).* New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may provide, for example, that papers filed in a drop box after the normal hours of the clerk's office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. §452 provides that "[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders." A corresponding provision exists in Rule 5001(a). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. See, e.g., *Casaldue v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

*Subdivision (a)(5).* New subdivision (a)(5) defines the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Bankruptcy Procedure contain both forward-looking

time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. See, e.g., Rules 1007(c) ("the schedules, statements, and other documents shall be filed by the debtor within 14 days of the entry of the order for relief"); 1019(5)(B)(ii) ("the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account"); and 7012(a) ("If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court.").

A backward-looking time period requires something to be done within a period of time *before* an event. See, e.g., Rules 6004(b) ("an objection to a proposed use, sale, or lease of property shall be filed and served not less than seven days before the date set for the proposed action"); 9006(d) ("A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing"). In determining what is the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction—that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days *after* an event, and the tenth day falls on Saturday, September 3, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days *before* an event, and the tenth day falls on Saturday, September 3, then the filing is due on Friday, August 31.

*Subdivision (a)(6).* New subdivision (a)(6) defines "legal holiday" for purposes of the Federal Rules of Bankruptcy Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of "legal holiday" days that are declared a holiday by the President or Congress.

For forward-counted periods—i.e., periods that are measured after an event—subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays, and defines the term "state"—for purposes of subdivision (a)(6)—to include the District of Columbia and any commonwealth or territory of the United States. Thus, for purposes of subdivision (a)(6)'s definition of "legal holiday," state includes the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal holidays extends the deadline. Thus, someone who thought that the federal courts might be closed on a state holiday would be safeguarded against an inadvertent late filing. In contrast, for backward-counted deadlines, not giving state holidays the treatment of federal holidays allows filing on the state holiday itself rather than the day before. Take, for example, Monday, April 21, 2008 (Patriot's Day, a legal holiday in the relevant state). If a filing is due 14 days after an event, and the fourteenth day is April 21, then the filing is due on Tuesday, April 22 because Monday, April 21 counts as a legal holiday. But if a filing is due 14 days before an event, and the fourteenth day is April 21, the filing is due on Monday, April 21; the fact that April 21 is a state holiday does not make April 21 a legal holiday for purposes of computing this backward-counted deadline. But note that if the clerk's office is inaccessible on Monday, April 21, then subdivision (a)(3) extends the April 21 filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday—no earlier than Tuesday, April 22.

*Changes Made After Publication.* The reference to Rule 6(a)(1) in subdivision (a)(3)(A) at line 50 of the rule as it was published was corrected by referring instead to Rule 9006(a)(1).

The Standing Committee changed Rule 9006(a)(6) to exclude state holidays from the definition of "legal holiday" for purposes of computing backward-counted periods; conforming changes were made to the Committee Note to subdivision (a)(6). In addition, the term "possession" was deleted from the definition of "state" in subdivision (a)(6), and a conforming change was made to the Committee Note.

[*Subdivision (d).*] The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

Subdivision (f) is amended to conform to the changes made to Rule 5(b)(2) of the Federal Rules of Civil Procedure as a part of the Civil Rules Restyling Project. As a part of that project, subparagraphs (b)(2)(C) and (D) of that rule were rewritten as subparagraphs (b)(2)(D), (E), and (F). The cross reference to those rules contained in subdivision (f) of this rule is corrected by this amendment.

#### **COMMITTEE NOTES ON RULES—2013 AMENDMENT**

The title of this rule is amended to draw attention to the fact that it prescribes time limits for the service of motion papers. These time periods apply unless another Bankruptcy Rule or a court order, including a local rule, prescribes different time periods. Rules 9013 and 9014 should also be consulted regarding motion practice. Rule 9013 governs the form of motions and the parties who must be served. Rule 9014 prescribes the procedures applicable to contested matters, including the method of serving motions commencing contested matters and subsequent papers. Subdivision (d) is amended to apply to any written response to a motion, rather than just to opposing affidavits. The caption of the subdivision is amended to reflect this change. Other changes are stylistic.

*Changes Made After Publication and Comment.* No changes were made after publication and comment.

#### **COMMITTEE NOTES ON RULES—2016 AMENDMENT**

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



If the court grants the motion to redact, the court must docket the redacted document, and public access to the motion and the unredacted document should remain restricted. If the court denies the motion, generally the restriction on public access to the motion and the document should be lifted. This procedure does not affect the availability of any remedies that an individual whose personal identifiers are exposed may have against the entity that filed the unredacted document.

This procedure does not affect the availability of any remedies that an individual whose personal identifiers are exposed may have against the entity that filed the unredacted document.

## OFFICIAL FORMS

[The Official Forms prescribed pursuant to Rule 9009 may be found on the United States Courts website.]

## APPENDIX

[SEE COURT WEBSITE FOR LATEST FORMS]

(As added Apr. 26, 2018, eff. Dec. 1, 2018.)

### **LENGTH LIMITS STATED IN PART VIII OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Appendix: Length Limits Stated in Part VIII of the Federal Rules of Bankruptcy Procedure is set out in the order of the Supreme Court amending the Federal Rules of Bankruptcy Procedure, April 26, 2018, available at the Supreme Court website.

# SELECT PROVISIONS OF TITLE 28, UNITED STATES CODE

## 28 USC CHAPTER 6—BANKRUPTCY JUDGES, Sec.151-159

Sec.

- 151. Designation of bankruptcy courts.
- 152. Appointment of bankruptcy judges.
- 153. Salaries; character of service.
- 154. Division of business; chief judge.<sup>1</sup>
- 155. Temporary transfer of bankruptcy judges.
- 156. Staff; expenses.
- 157. Procedures.
- 158. Appeals.
- 159. Bankruptcy statistics.

### §151. Designation of bankruptcy courts

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

(Added Pub. L. 98-353, title I, §104(a), July 10, 1984, 98 Stat. 336.)

#### EFFECTIVE DATE

Pub. L. 98-353, title I, §122, July 10, 1984, 98 Stat. 346, provided that:

"(a) Except as otherwise provided in this section, this title and the amendments made by this title [enacting this chapter and sections 1408 to 1412 and 1452 of this title, amending sections 372, 634, 957, 1334, 1360, and 1930 of this title, sections 8331, 8334, 8336, 8339, 8341, and 8344 of Title 5, Government Organization and Employees, and section 105 of Title 11, Bankruptcy, enacting provisions set out as notes preceding section 151 of this title and under sections 151 to 153, 634, and 1334 of this title and section 8331 of Title 5, amending provisions set out as notes preceding sections 151 and 1471 of this title and section 101 of Title 11, and repealing provisions set out as notes preceding sections 151 and 1471 of this title] shall take effect on the date of the enactment of this Act [July 10, 1984].

"(b) Section 1334(c)(2) of title 28, United States Code, and section 1411(a) of title 28, United States Code, as added by this Act, shall not apply with respect to cases under title 11 of the United States Code that are pending on the date of enactment of this Act [July 10, 1984], or to proceedings arising in or related to such cases.

"(c) Sections 108(b) [enacting provisions set out as a note under section 634 of this title], 113 [amending provisions set out as a note preceding section 101 of Title 11, Bankruptcy], and 121(e) [enacting provisions set out as a note preceding section 151 of this title] shall take effect on June 27, 1984."

#### SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-353, §1, July 10, 1984, 98 Stat. 333, provided: "That this Act [enacting this chapter and sections 1408 to 1412 and 1452 of this title and sections 557 to 559 and 1113 of Title 11, Bankruptcy, amending sections 44, 98, 131, 133, 371, 372, 634, 957, 1334, 1360, and 1930 of this title, sections 8331, 8334, 8336, 8339, 8341, 8344, 8701, 8706, 8714a, and 8714b of Title 5,

Government Organization and Employees, and sections 101 to 103, 105, 108, 109, 303, 321, 322, 326 to 330, 342, 343, 345, 346, 349, 350, 361 to 363, 365, 366, 501 to 503, 505 to 507, 509, 510, 521 to 525, 541 to 550, 552 to 555, 702 to 704, 707, 723 to 728, 741, 745, 752, 761, 763 to 766, 901 to 903, 921, 922, 927, 943, 945, 1102, 1103, 1105 to 1108, 1112, 1121, 1123 to 1127, 1129, 1141, 1142, 1144 to 1146, 1166, 1168 to 1171, 1173, 1301, 1302, 1304, 1307, 1322, 1324 to 1326, 1328, 1329, 15103, and 151302 of Title 11, enacting provisions set out as notes preceding section 151 of this title and under sections 44, 133, 151 to 153, 371, 634, 1334, and 2075 of this title, sections 8331 and 8706 of Title 5, and preceding section 101 of Title 11 and under sections 101, 365, and 1113 of Title 11, amending provisions set out as notes preceding sections 151, 581, and 1471 of this title and section 101 of Title 11, repealing provisions set out as notes preceding sections 151 and 1471 of this title, amending Rules 2002 and 3001 of the Bankruptcy Rules, set out in the Appendix to this title, and amending Official Bankruptcy Form No. 1] may be cited as the 'Bankruptcy Amendments and Federal Judgeship Act of 1984'."

#### SEPARABILITY

Pub. L. 98-353, title I, §119, July 10, 1984, 98 Stat. 344, provided that: "If any provision of this Act [see Short Title of 1984 Amendment note above] or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby."

### §152. Appointment of bankruptcy judges

(a)(1) Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts	Judges
Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	2
Arizona	7
Arkansas:	
Eastern and Western	3
California:	

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Northern	9
Eastern	6
Central	21
Southern	4
Colorado	5
Connecticut	3
Delaware	1
District of Columbia	1
Florida:	
Northern	1
Middle	8
Southern	5
Georgia:	
Northern	8
Middle	3
Southern	2
Hawaii	1
Idaho	2
Illinois:	
Northern	10
Central	3
Southern	1
Indiana:	
Northern	3
Southern	4
Iowa:	
Northern	2
Southern	2
Kansas	4
Kentucky:	
Eastern	2
Western	3
Louisiana:	
Eastern	2
Middle	1
Western	3
Maine	2
Maryland	4
Massachusetts	5
Michigan:	
Eastern	4
Western	3
Minnesota	4
Mississippi:	
Northern	1

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Extract

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Southern	2
Missouri:	
Eastern	3
Western	3
Montana	1
Nebraska	2
Nevada	3
New Hampshire	1
New Jersey	8
New Mexico	2
New York:	
Northern	2
Southern	9
Eastern	6
Western	3
North Carolina:	
Eastern	2
Middle	2
Western	2
North Dakota	1
Ohio:	
Northern	8
Southern	7
Oklahoma:	
Northern	2
Eastern	1
Western	3
Oregon	5
Pennsylvania:	
Eastern	5
Middle	2
Western	4
Puerto Rico	2
Rhode Island	1
South Carolina	2
South Dakota	2
Tennessee:	
Eastern	3
Middle	3
Western	4
Texas:	
Northern	6
Eastern	2
Southern	6
Western	4

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Extract

Utah	3
Vermont	1
Virginia:	
Eastern	5
Western	3
Washington:	
Eastern	2
Western	5
West Virginia:	
Northern	1
Southern	1
Wisconsin:	
Eastern	4
Western	2
Wyoming	1.

(3) Whenever a majority of the judges of any court of appeal cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

(b)(1) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted to the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

(3) Not later than December 31, 1984, and not later than the end of each 2-year period thereafter, the Judicial Conference of the United States shall conduct a comprehensive review of all judicial districts to assess the continuing need for the bankruptcy judges authorized by this section, and shall report to the Congress its findings and any recommendations for the elimination of any authorized position which can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death.

(c)(1) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

(2)(A) Bankruptcy judges may hold court at such places within the United States outside the judicial district as the nature of the business of the court may require, and upon such notice as the court orders, upon a finding by either the chief judge of the bankruptcy court (or, if the chief judge is unavailable, the most senior available bankruptcy judge) or by the judicial council of the circuit that, because of emergency conditions, no location within the district is reasonably available where the bankruptcy judges could hold court.

(B) Bankruptcy judges may transact any business at special sessions of court held outside the district pursuant to this paragraph that might be transacted at a regular session.

(C) If a bankruptcy court issues an order exercising its authority under subparagraph (A), the court—

(i) through the Administrative Office of the United States Courts, shall—

(I) send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

(II) not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order, including—

(aa) the reasons for the issuance of such order;

(bb) the duration of such order;

(cc) the impact of such order on litigants; and

(dd) the costs to the judiciary resulting from such order; and

(ii) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.

(d) With the approval of the Judicial Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

(Added Pub. L. 98–353, title I, §104(a), July 10, 1985, 98 Stat. 836; amended Pub. L. 99–554, title I, §101, Oct. 27, 1986, 100 Stat. 3088; Pub. L. 100–507, Nov. 3, 1988, 102 Stat. 2982; Pub. L. 101–650, title III, §304, Dec. 1, 1990, 104 Stat. 605; Pub. L. 102–361, §§2, 4, Aug. 26, 1992, 106 Stat. 965, 966; Pub. L. 109–8, title XII, §1223(c), Apr. 20, 2005, 119 Stat. 198; Pub. L. 109–63, §2(c), Sept. 9, 2005, 119 Stat. 1994.)

#### AMENDMENTS

**2005**—Subsec. (a)(1). Pub. L. 109–63, §1223(d)(1), substituted "Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located." for "The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph."

Subsec. (a)(2). Pub. L. 109–63, §1223(d)(2), substituted "3" for "2" in item relating to middle district of Georgia and struck out item relating to middle and southern districts of Georgia.

Subsec. (c). Pub. L. 109–63 designated existing provisions as par. (1) and added par. (2).

**1992**—Subsec. (a)(2). Pub. L. 102–361, §2, in item relating to district of Arizona substituted "7" for "5", in item relating to central district of California substituted "21" for "19", in item relating to district of Connecticut substituted "3" for "2", in item relating to middle district of Florida substituted "8" for "4", in item relating to southern district of Florida substituted "5" for "3", in item relating to northern district of Georgia substituted "8" for "6", inserted item relating to middle and southern districts of Georgia, in item relating to district of Maryland substituted "4" for "3", in item relating to district of Massachusetts substituted "5" for "4", in item relating to district of New Jersey substituted "8" for "7", in item relating to southern district of New York substituted "9" for "7", in item relating to eastern district of Pennsylvania substituted "5" for "3", in item relating to middle district of Tennessee substituted "3" for "2", in item relating to western district of Tennessee substituted "4" for "3", in item relating to northern district of Texas substituted "6" for "5", and in item relating to eastern district of Virginia substituted "5" for "4".

Subsec. (b)(3). Pub. L. 102–361, §4, added par. (3).

**1990**—Subsec. (a)(1). Pub. L. 101–650 inserted after third sentence "However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor."

**1988**—Subsec. (a)(2). Pub. L. 100–587 in item relating to district of Alaska substituted "2" for "1", in item relating to district of Colorado substituted "5" for "4", in item relating to district of Kansas substituted "4" for "3", in item relating to eastern district of Kentucky substituted "2" for "1", in item relating to eastern district of Texas substituted "2" for "1", in item relating to western district of Texas substituted "4" for "3", and in item relating to district of Arizona substituted "5" for "4".

**1986**—Subsec. (a)(2). Pub. L. 99–554 in item relating to eastern district and western district of Arkansas substituted "3" for "2", in item relating to northern district of California substituted "9" for "7", in item relating to eastern district of California substituted "6" for "4", in item relating to central district of California substituted "19" for "12", in item relating to southern district of California substituted "4" for "3", in item relating to middle district of Florida substituted "4" for "2", in item relating to northern district of Georgia substituted "6" for "4", in item relating to southern district of Georgia substituted "2" for "1", in item relating to district of Idaho substituted "2" for "1", in item relating to northern district of Illinois substituted "10" for "8", in item relating to central district of Illinois substituted "3" for "2", in item relating to northern district of Indiana substituted "3" for "2", in item relating to northern district of Iowa substituted "2" for "1", in item relating to southern district of Iowa substituted "2" for "1", in item relating to western district of Kentucky substituted "3" for "2", in item relating to western district of Louisiana substituted "2" for "2", in item relating to district of Maryland substituted "3" for "2", in item relating to western district of Michigan substituted "3" for "2", in item relating to district of Nebraska substituted "2" for "1", in item relating to district of Nevada substituted "3" for "2", in item relating to district of New Jersey substituted "7" for "5", in item relating to western district of North Carolina substituted "2" for "1", in item relating to northern district of Oklahoma substituted "2" for "1", in item relating to western district of Oklahoma substituted "3" for "2", in item relating to district of Oregon substituted "5" for "4", in item relating to western district of Pennsylvania substituted "4" for "3", in item relating to district of South Carolina substituted "2" for "1", in item relating to district of South Dakota substituted "2" for "1", in item relating to eastern district of Tennessee substituted "3" for "2", in item relating to western district of Tennessee substituted "3" for "2", in item relating to northern district of Texas substituted "5" for "4", in item relating to southern district of Texas substituted "6" for "3", in item relating to western district of Texas substituted "3" for "2", in item relating to district of Utah substituted "3" for "2", in item relating to eastern district of Virginia substituted "4" for "3", in item relating to eastern district of Washington substituted "2" for "1", in item relating to western district of Washington substituted "5" for "4", and in item relating to eastern district of Wisconsin substituted "4" for "3".

#### **EFFECTIVE DATE OF 2005 AMENDMENT**

Pub. L. 109–8, title XII, §1223(e), Apr. 20, 2005, 119 Stat. 198, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Apr. 20, 2005]."

#### **EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99–554 effective Oct. 27, 1986, see section 302(b) of Pub. L. 99–554, set out as a note under section 581 of this title.

#### **SUBSEQUENT REAUTHORIZATION**



Pub. L. 112–121, §4, May 25, 2012, 126 Stat. 349, provided that: "Prior to further reauthorization of any judgeship authorized by this Act [See Short Title of 2012 Amendment note set out under section 1 of this title], the Committee on the Judiciary of the Senate and House of Representatives shall conduct a review of the bankruptcy judgeships authorized by this Act to determine the need, if any, for continued reauthorization of each judgeship, to evaluate any changes in all bankruptcy case filings and their effect, if any, on filing fee revenue, and to require the Administrative Office of the Courts to submit a report to the Committee on the Judiciary of the Senate and House of Representatives on bankruptcy case workload, bankruptcy judgeship costs, and filing fee revenue."

#### TEMPORARY APPOINTMENT OF ADDITIONAL JUDGES

Pub. L. 115–72, div. B, §1002, Oct. 26, 2017, 131 Stat. 1229, provided that:

"(a) Temporary Office of Bankruptcy Judges Authorized by the Bankruptcy Judgeship Act of 2005.—

"(1) Extensions.—The temporary office of bankruptcy judges authorized for the following districts by subsection (b) of the Bankruptcy Judgeship Act of 2005 [section 1223 of Pub. L. 109–8] (28 U.S.C. 152 note) are extended until the applicable vacancy specified in paragraph (2) in the office of a bankruptcy judge for the respective district occurs:

- "(A) The district of Delaware.
- "(B) The southern district of Florida.
- "(C) The district of Maryland.
- "(D) The eastern district of Michigan.
- "(E) The district of Nevada.
- "(F) The eastern district of North Carolina.
- "(G) The district of Puerto Rico.
- "(H) The eastern district of Virginia.

"(2) Vacancies.—

"(A) Single vacancies.—Except as provided in subparagraphs (B), (C), and (D), the 1st vacancy in the office of a bankruptcy judge for each district specified in paragraph (1)—

"(i) occurring more than 5 years after the date of the enactment of this Act [Oct. 26, 2017]; and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(B) District of Delaware.—The 1st, 2d, 3d, and 4th vacancies in the office of a bankruptcy judge for the district of Delaware—

"(i) occurring 5 years or more after the date of the enactment of this Act; and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(C) District of Maryland.—

"(i) The 1st vacancy in the office of a bankruptcy judge for the district of Maryland—

"(I) occurring more than 5 years after the date of the enactment of this Act; and

"(II) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(ii) The 2d and 3d vacancies in the office of a bankruptcy judge for the district of Maryland resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(D) Southern district of florida.—The 1st and 2d vacancies in the office of a bankruptcy judge for the southern district of Florida—

"(i) occurring more than 5 years after the date of the enactment of this Act; and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(3) Applicability of provisions.—Except as provided in paragraphs (1) and (2), all other provisions of subsection (b) of the Bankruptcy Judgeship Act of 2005 (28 U.S.C. 152 note) and section 2 of the Temporary Bankruptcy Judgeships Extension Act of 2012 [Pub. L. 112–121] (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in paragraph (1).

"(b) Temporary Office of Bankruptcy Judges Extended by the Bankruptcy Judgeship Act of 2005 and the Temporary Bankruptcy Judgeships Extension Act of 2012.—

"(1) Extensions.—The temporary office of bankruptcy judges authorized by section 3 of the Bankruptcy Judgeship Act of 1992 [Pub. L. 102–361] (28 U.S.C. 152 note) and extended by subsection (c) of the Bankruptcy Judgeship Act of 2005 (28 U.S.C. 152 note) and further extended by section 2 of the Temporary Bankruptcy Judgeships Extension Act of 2012 (28 U.S.C. 152 note) for the district of Delaware and the district of Puerto Rico are extended until the applicable vacancy specified in paragraph (2) in the office of a bankruptcy judge for the respective district occurs.

"(2) Vacancies.—

"(A) District of Delaware.—The 1st vacancy in the office of a bankruptcy judge for the district of Delaware—

"(i) occurring more than 5 years after the date of the enactment of this Act [Oct. 26, 2017]; and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(B) District of Puerto Rico.—The 2d vacancy in the office of a bankruptcy judge for the district of Puerto Rico—

"(i) occurring more than 5 years after the date of the enactment of this Act; and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(3) Applicability of other provisions.—Except as provided in paragraphs (1) and (2), all other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), subsection (c) of the Bankruptcy Judgeship Act of 2005 (28 U.S.C. 152 note), and section 2 of the Temporary Bankruptcy Judgeships Extension Act of 2012 (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in paragraph (1)."

Pub. L. 115–72, div. B, §1003, Oct. 26, 2017, 131 Stat. 1231, provided that:

"(a) Appointments.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of that title:

"(1) Two additional bankruptcy judges for the district of Delaware.

"(2) One additional bankruptcy judge for the middle district of Florida.

"(3) One additional bankruptcy judge for the eastern district of Michigan.

"(b) Vacancies.—

"(1) District of Delaware.—The 6th and 7th vacancies in the office of a bankruptcy judge for the district of Delaware—

"(A) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under subsection (a)(1) to such office; and

"(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(2) Middle district of Florida.—The 1st vacancy in the office of a bankruptcy judge for the middle district of Florida—

"(A) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under subsection (a)(2) to such office; and

"(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(3) Eastern district of Michigan.—The 2d vacancy in the office of a bankruptcy judge for the eastern district of Michigan—

"(A) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under subsection (a)(3) to such office; and

"(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled."

Pub. L. 112–121, §2, May 25, 2012, 126 Stat. 346, as amended by Pub. L. 115–31, div. E, title III, §307, May 5, 2017, 131 Stat. 347, provided that:

"(a) Temporary Offices of Bankruptcy Judges Authorized by Public Law 109–8.—

"(1) Extensions.—The temporary office of bankruptcy judges authorized for the following districts by section 1223(b) of Public Law 109–8 (28 U.S.C. 152 note) are extended until the applicable vacancy specified in paragraph (2) in the office of a bankruptcy judge for the respective district occurs:

"(A) The central district of California.

"(B) The eastern district of California.

"(C) The district of Delaware.

"(D) The southern district of Florida.

"(E) The southern district of Georgia.

"(F) The district of Maryland.

"(G) The eastern district of Michigan.

"(H) The district of New Jersey.

"(I) The northern district of New York.

"(J) The eastern district of North Carolina.

"(K) The eastern district of Pennsylvania.

"(L) The middle district of Pennsylvania.

- "(M) The district of Puerto Rico.
- "(N) The district of South Carolina.
- "(O) The western district of Tennessee.
- "(P) The eastern district of Virginia.
- "(Q) The district of Nevada.

"(2) Vacancies.—

"(A) Single vacancies.—Except as provided in subparagraphs (B), (C), (D), (E), (F), (G), and (H), the 1st vacancy in the office of a bankruptcy judge for each district specified in paragraph (1)—

"(i) occurring more than 5 years after the date of the enactment of this Act [May 25, 2012], and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(B) Central district of california.—The 1st, 2d, and 3d vacancies in the office of a bankruptcy judge for the central district of California—

"(i) occurring 5 years or more after the date of the enactment of this Act, and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(C) District of delaware.—The 1st, 2d, 3d, and 4th vacancies in the office of a bankruptcy judge for the district of Delaware—

"(i) in the case of the 1st and 2d vacancies, occurring more than 6 years after the date of the enactment of this Act,

"(ii) in the case of the 3d and 4th vacancies, occurring more than 5 years after the date of the enactment of this Act, and

"(iii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(D) Southern district of florida.—The 1st and 2d vacancies in the office of a bankruptcy judge for the southern district of Florida—

"(i) occurring more than 6 years after the date of the enactment of this Act, and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(E) District of maryland.—The 1st, 2d, and 3d vacancies in the office of a bankruptcy judge for the district of Maryland—

"(i) occurring more than 5 years after the date of the enactment of this Act, and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(F) Eastern district of michigan.—The 1st vacancy in the office of a bankruptcy judge for the eastern district of Michigan—

"(i) occurring 6 years or more after the date of the enactment of this Act, and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(G) District of puerto rico.—The 1st vacancy in the office of a bankruptcy judge for the district of Puerto Rico—

"(i) occurring 6 years or more after the date of the enactment of this Act, and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(H) Eastern district of Virginia.—The 1st vacancy in the office of a bankruptcy judge for the eastern district of Virginia—

"(i) occurring 6 years or more after the date of the enactment of this Act, and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(3) Applicability of other provisions.—Except as provided in paragraphs (1) and (2), all other provisions of section 1223(b) of Public Law 109–8 (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in paragraph (1).

"(b) Temporary Office of Bankruptcy Judges Extended by Public Law 109–8.—

"(1) Extensions.—The temporary office of bankruptcy judges authorized by section 3 of the Bankruptcy Judgeship Act of 1992 [Pub. L. 102–361] (28 U.S.C. 152 note) and extended by section 1223(c) of Public Law 109–8 (28 U.S.C. 152 note) for the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee are extended until the applicable vacancy specified in paragraph (2) in the office of a bankruptcy judge for the respective district occurs.

"(2) Vacancies.—

"(A) District of Delaware.—The 5th vacancy in the office of a bankruptcy judge for the district of Delaware—

"(i) occurring more than 5 years after the date of the enactment of this Act [May 25, 2012], and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(B) District of Puerto Rico.—The 1st vacancy in the office of a bankruptcy judge for the district of Puerto Rico—

"(i) occurring more than 5 years after the date of the enactment of this Act, and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(C) Eastern district of Tennessee.—The 1st vacancy in the office of a bankruptcy judge for the eastern district of Tennessee—

"(i) occurring more than 5 years after the date of the enactment of this Act, and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(3) Applicability of other provisions.—Except as provided in paragraphs (1) and (2), all other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) and section 1223(c) of Public Law 109–8 (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in paragraph (1).

"(c) Temporary Office of the Bankruptcy Judge Authorized by Public Law 102–361 for the Middle District of North Carolina.—

"(1) Extension.—The temporary office of the bankruptcy judge authorized by section 3 of the Bankruptcy Judgeship Act of 1992 [Pub. L. 102–361] (28 U.S.C. 152 note) for the middle district of North Carolina is extended until the vacancy specified in paragraph (2) occurs.

"(2) Vacancy.—The 1st vacancy in the office of a bankruptcy judge for the middle district of North Carolina—

"(A) occurring more than 5 years after the date of the enactment of this Act [May 25, 2012], and

"(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

"(3) Applicability of other provisions.—Except as provided in paragraphs (1) and (2), all other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary office of the bankruptcy judge referred to in paragraph (1)."

Pub. L. 109–8, title XII, §1223(b), (c), Apr. 20, 2005, 119 Stat. 196, 198, provided that:

"(b) Temporary Judgeships.—

"(1) Appointments.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

- "(A) One additional bankruptcy judge for the eastern district of California.
- "(B) Three additional bankruptcy judges for the central district of California.
- "(C) Four additional bankruptcy judges for the district of Delaware.
- "(D) Two additional bankruptcy judges for the southern district of Florida.
- "(E) One additional bankruptcy judge for the northern district of Georgia.
- "(F) Three additional bankruptcy judges for the district of Maryland.
- "(G) One additional bankruptcy judge for the eastern district of Michigan.
- "(H) One additional bankruptcy judge for the southern district of Mississippi.
- "(I) One additional bankruptcy judge for the district of New Jersey.
- "(J) One additional bankruptcy judge for the eastern district of New York.
- "(K) One additional bankruptcy judge for the northern district of New York.
- "(L) One additional bankruptcy judge for the southern district of New York.
- "(M) One additional bankruptcy judge for the eastern district of North Carolina.
- "(N) One additional bankruptcy judge for the eastern district of Pennsylvania.
- "(O) One additional bankruptcy judge for the middle district of Pennsylvania.
- "(P) One additional bankruptcy judge for the district of Puerto Rico.
- "(Q) One additional bankruptcy judge for the western district of Tennessee.
- "(R) One additional bankruptcy judge for the eastern district of Virginia.
- "(S) One additional bankruptcy judge for the district of South Carolina.
- "(T) One additional bankruptcy judge for the district of Nevada.

"(2) Vacancies.—

"(A) Districts with single appointments.—Except as provided in subparagraphs (B), (C), (D), and (E), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

"(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

"(B) Central district of California.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the central district of California—

"(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;  
shall not be filled.

"(C) District of Delaware.—The 1st, 2d, 3d, and 4th vacancies in the office of bankruptcy judge in the district of Delaware—

"(i) occurring 5 years or more after the respective 1st, 2d, 3d, and 4th appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;  
shall not be filled.

"(D) Southern district of Florida.—The 1st and 2d vacancies in the office of bankruptcy judge in the southern district of Florida—

"(i) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under paragraph (1)(D); and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;  
shall not be filled.

"(E) District of Maryland.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—

"(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

"(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;  
shall not be filled.  
"(c) Extensions.—

"(1) In general.—The temporary offices of bankruptcy judges authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 [Pub. L. 102-361] (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring 5 years after the date of the enactment of this Act [Apr. 20, 2005].

"(2) Applicability of other provisions.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in this subsection."

Pub. L. 102-361, §3, Aug. 26, 1992, 106 Stat. 965, as amended by Pub. L. 104-317, title III, §307, Oct. 19, 1996, 110 Stat. 3852, provided that:

"(a) Appointments.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code:

"(1) 1 additional bankruptcy judge for the northern district of Alabama.

"(2) 1 additional bankruptcy judge for the district of Colorado.

"(3) 1 additional bankruptcy judge for the district of Delaware.

"(4) 1 additional bankruptcy judge for the southern district of Illinois.

- "(5) 1 additional bankruptcy judge for the district of New Hampshire.
- "(6) 1 additional bankruptcy judge for the middle district of North Carolina.
- "(7) 1 additional bankruptcy judge for the district of Puerto Rico.
- "(8) 1 additional bankruptcy judge for the district of South Carolina.
- "(9) 1 additional bankruptcy judge for the eastern district of Tennessee.
- "(10) 1 additional bankruptcy judge for the western district of Texas.

"(b) Vacancies.—The first vacancy in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a), resulting from the death, retirement, resignation, or removal of a bankruptcy judge, and occurring 5 years or more after the appointment date of the judge named to fill the temporary judgeship position, shall not be filled. In the case of a vacancy resulting from the expiration of the term of a bankruptcy judge not described in the preceding sentence, that judge shall be eligible for reappointment as a bankruptcy judge in that district."

**EXTENSION AND TERMINATION OF TERM OF OFFICE OF PART-TIME BANKRUPTCY JUDGE SERVING ON JULY 2, 1986, IN DISTRICT OF OREGON, WESTERN DISTRICT OF MICHIGAN, AND EASTERN DISTRICT OF OKLAHOMA**

Pub. L. 99-349, title I, July 2, 1986, 100 Stat. 718, provided that: "Notwithstanding the provisions of section 106(b)(1) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 [section 106(b)(1) of Pub. L. 98-353, set out below], a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 2, 1986] may continue to serve as a part-time judge for such district until December 31, 1986, or until such time as a full-time bankruptcy judge for such district is appointed, whichever is earlier. *Provided*, That these provisions shall apply only to part-time bankruptcy judges serving in the district of Oregon, the western district of Michigan, and the eastern district of Oklahoma."

**EXTENSION AND TERMINATION OF TERM OF OFFICE OF BANKRUPTCY JUDGE AND PART-TIME BANKRUPTCY JUDGE SERVING ON JULY 10, 1984; PRACTICE OF LAW BY PART-TIME BANKRUPTCY JUDGE**

Pub. L. 98-353, title I, §106, July 10, 1984, 98 Stat. 342, provided that:

"(a) Notwithstanding section 152 of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act [July 10, 1984] is extended to and expires four years after the date such bankruptcy judge was last appointed to such office or on October 1, 1986, whichever is later.

"(b)(1) Notwithstanding section 153(a) of title 28, United States Code, as added by this Act, and notwithstanding subsection (a) of this section, a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 10, 1984] may continue to serve on such basis for a period not to exceed two years from the date of enactment of this Act [July 10, 1984].

"(2) Notwithstanding the provisions of section 153(b) of title 28, United States Code, a bankruptcy judge serving on a part-time basis may engage in the practice of law but may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Judicial Conference of the United States may promulgate appropriate rules and regulations to implement this paragraph."

**APPOINTMENT TO FILL VACANCIES; NOMINATIONS; QUALIFICATIONS**



Pub. L. 98–353, title I, §120, July 10, 1984, 98 Stat. 344, as amended by Pub. L. 99–554, title I, §102, Oct. 27, 1986, 100 Stat. 3089; Pub. L. 104–317, title III, §303, Oct. 19, 1996, 110 Stat. 3852, provided that:

"(a)(1) Whenever a court of appeals is authorized to fill a vacancy that occurs on a bankruptcy court of the United States, such court of appeals shall appoint to fill that vacancy a person whose character, experience, ability, and impartiality qualify such person to serve in the Federal judiciary.

"(2) It is the sense of the Congress that the courts of appeals should consider for appointment under section 152 of title 28, United States Code, to the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

"(3) When filling vacancies, the court of appeals may consider reappointing incumbent bankruptcy judges under procedures prescribed by regulations issued by the Judicial Conference of the United States.

"(b) The judicial council of the circuit involved shall assist the court of appeals by evaluating potential nominees and by recommending to such court for consideration for appointment to each vacancy on the bankruptcy court persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference of the United States. In the case of the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, such potential nominees shall include the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment and the judicial council determines that such judge is qualified under subsection (c) of this section to continue to serve. Such potential nominees shall receive consideration equal to that given all other potential nominees for such position. All incumbent nominees seeking reappointment thereafter may be considered for such a reappointment, pursuant to a majority vote of the judges of the appointing court of appeals, under procedures authorized under subsection (a)(2).

"(c) Before transmitting to the court of appeals the names of the persons the judicial council for the circuit deems best qualified to fill any existing vacancy, the judicial council shall have determined that—

"(1) public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy, to identify qualified candidates, without regard to race, color, sex, religion, or national origin,

"(2) such persons are members in good standing of at least one State bar, the District of Columbia bar, or the bar of the Commonwealth of Puerto Rico, and members in good standing of every other bar of which they are members,

"(3) such persons possess, and have a reputation for, integrity and good character,

"(4) such persons are of sound physical and mental health,

"(5) such persons possess and have demonstrated commitment to equal justice under law,

"(6) such persons possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal

problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes, and

"(7) such persons demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge."

### **§153. Salaries; character of service**

(a) Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services, a salary at an annual rate that is equal to 92 percent of the salary of a judge of the district court of the United States as determined pursuant to section 135, to be paid at such times as the Judicial Conference of the United States determines.

(b) A bankruptcy judge may not engage in the practice of law and may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Conference may promulgate appropriate rules and regulations to implement this subsection.

(c) Each individual appointed under this chapter shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of the office of bankruptcy judge.

(d) A bankruptcy judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

(Added Pub. L. 98-353, title I, §104(a), July 10, 1984, 98 Stat. 328; amended Pub. L. 100-202, §101(a), [title IV, §408(a)], Dec. 22, 1987, 101 Stat. 1329, 1329-16; Pub. L. 100-702, title X, §1003(a)(1), Nov. 19, 1988, 102 Stat. 4665.)

#### **AMENDMENT**

**1988**—Subsec. (d). Pub. L. 100-702 added subsec. (d).

**1987**—Subsec. (a). Pub. L. 100-202 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (U.S.C. 551-361) as adjusted by section 461 of this title, to be paid at such times as the Judicial Conference of the United States determines."

#### **EFFECTIVE DATE OF 1987 AMENDMENT**

Pub. L. 100-202, §101(a), [title IV, §408(d)], Dec. 22, 1987, 101 Stat. 1329, 1329-27, provided that: "This section [amending this section, section 634 of this title, and section 356 of Title 2, The Congress] shall become effective October 1, 1988, and any salary affected by the provisions of this section shall be adjusted at the beginning of the first applicable pay period commencing on or after such date of enactment [probably should read "such date", meaning Oct. 1, 1988]."

#### **TRANSITION PROVISIONS**

Pub. L. 100-702, title X, §1003(b), Nov. 19, 1988, 102 Stat. 4665, provided that:

"(1) If an individual who is exempted from the Leave Act by operation of amendments under this section [amending this section and sections 156, 631, 634, 712, 752, and 794 of this title] and who was previously subject to the provisions of subchapter I of chapter 63 of title 5, United States Code, without a break in service, again becomes subject to this subchapter on completion of his service as an exempted officer, the unused annual leave and sick leave standing to his credit when he was exempted from this subchapter is deemed to have remained to his credit.

"(2) In computing an annuity under section 8339 of title 5, United States Code, the total service of a person specified in paragraph (1) of this subsection who retired on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations

imposed by subsection (f) of section 8339 of title 5, United States Code, the days of unused sick leave standing to his credit when he was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility."

#### **CONTINUATION OF SALARIES OF BANKRUPTCY JUDGES IN EFFECT ON JUNE 27, 1984**

Pub. L. 98-353, title I, §105(a), July 10, 1984, 98 Stat. 342, provided that: "The salary of a bankruptcy judge in effect on June 27, 1984, shall remain in effect until changed as a result of a determination or adjustment made pursuant to section 153(a) of title 28, United States Code, as added by this Act."

#### **PART-TIME BANKRUPTCY JUDGES**

For provision that notwithstanding subsecs. (a) and (b) of this section, a bankruptcy judge serving on a part-time basis on July 10, 1984, may continue to serve on such basis for two years from such date, and may engage in the practice of law, see section 106 of Pub. L. 98-353, set out as a note under section 152 of this title.

#### **SALARY INCREASES**

**1988**—Salaries of bankruptcy judges continued at \$72,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

**1987**—Salaries of bankruptcy judges increased to \$72,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of bankruptcy judges increased to \$70,500 effective on first day of first pay period beginning on or after Jan. 1, 1987, by Ex. Ord. No. 12540, Dec. 31, 1986, 52 F.R. 505, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

**1985**—Salaries of bankruptcy judges increased to \$68,400 effective on first day of first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 31, 1986, 52 F.R. 505, formerly set out as a note under section 5332 of Title 5.

**1984**—Salaries of bankruptcy judges (full-time) and bankruptcy judges (part-time) (maximum rate) increased to \$66,100 and \$33,100, respectively, effective on first day of first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

**1982**—Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to \$63,600 and \$31,800, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12387 further provided that pursuant to section 101(e) of Pub. L. 97-276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which was \$58,500 for bankruptcy judges and referees in bankruptcy (full-time), and \$30,600 for referees in bankruptcy (part-time) (maximum rate).

Maximum rate payable to bankruptcy judges after Dec. 17, 1982, increased from \$58,500 to \$63,600, see Pub. L. 97-377, title I, §129(b)-(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of Title 5.

**1981**—Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to \$61,200 and \$30,600, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1981, by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12330 further provided that pursuant to section 101(c) of Pub. L. 97–51 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1981, which was \$51,167.50 for bankruptcy judges and referees in bankruptcy (full-time), and \$25,583.75 for referees in bankruptcy (part-time) (maximum rate).

**1980**—Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to \$58,400 and \$29,200, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to section 101(c) of Pub. L. 96–369 funds are not available to pay a salary which exceeds the rate in effect on Sept. 30, 1980, which was \$51,167.50 for bankruptcy judges and referees in bankruptcy (full-time), and \$25,583.75 for referees in bankruptcy (part-time) (maximum rate).

For limitations on use of funds for period Oct. 1, 1980 through June 5, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–369 and section 101(c) of Pub. L. 96–536, set out as notes under section 5318 of Title 5.

**1979**—Salaries of bankruptcy judges increased to \$51,167.50 effective on first day of first pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12155, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12155 further provided that pursuant to Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the applicable rate payable for such position or office in effect on Sept. 30, 1978, which was \$51,167.50 for bankruptcy judges.

#### **§154. Division of businesses; chief judge**

(a) Each bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court.

(b) In each district court having more than one bankruptcy judge the district court shall designate one judge to serve as chief judge of such bankruptcy court. Whenever a majority of the judges of such district court cannot agree upon the designation as chief judge, the chief judge of such district court shall make such designation. The chief judge of the bankruptcy court shall ensure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.

(Added Pub. L. 98–353, title I, §104(a), July 10, 1984, 98 Stat. 339.)

#### **§155. Temporary transfer of bankruptcy judges**

(a) A bankruptcy judge may be transferred to serve temporarily as a bankruptcy judge in any judicial district other than the judicial district for which such bankruptcy judge was appointed upon the approval of the judicial council of each of the circuits involved.

(b) A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States, subject