

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

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RALPH K. WINTER, JR.
EVIDENCE RULES

TO: Honorable Alicemarie H. Stotler, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable Paul Mannes, Chair
Advisory Committee on Bankruptcy Rules

SUBJECT: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 16, 1994

The report of the Advisory Committee on Bankruptcy Rules includes the following items:

I. Action Items

A. Proposed amendments to Rules 8018, 9029, and 9037, which conform to the uniform provisions dealing with local rules, standing orders, and technical amendments, are presented to the Standing Committee for its consideration. A preliminary draft of these proposed amendments was published for comment in October 1993. These proposed amendments are discussed in my separate memorandum to you dated May 12, 1994, which is enclosed immediately following this memorandum. A draft of the proposed amendments and a summary of the comments received from the bench and bar are attached to my May 12th memorandum.

B. The Advisory Committee requests permission to publish for comment by the bench and bar a preliminary draft of proposed amendments to Bankruptcy Rules 1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006. These proposed amendments are summarized in, and attached to, my enclosed letter dated May 14, 1994.

II. Information Items

A. The Supreme Court has forwarded to Congress amendments to Bankruptcy Rules 8002(b) and 8006 governing appeals from

judgments and orders of a bankruptcy court. These amendments will conform the Bankruptcy Rules to the recently-amended provisions of Rule 4(a)(4) of the Appellate Rules. Rule 8002(b) will be amended (1) by adding a motion for relief from a judgment or order pursuant to Civil Rule 60 to the list of postjudgment motions that toll the time for filing a notice of appeal, and (2) by providing that a notice of appeal filed prior to disposition of a tolling postjudgment motion does not become a nullity, but is suspended until the court has disposed of the motion. The amendment to Rule 8006 will toll the time for designating the record during the pendency of a tolling postjudgment motion. If Congress does not take any action regarding these amendments, they will become effective on August 1, 1994.

B. The Advisory Committee met on February 24-25, 1994, in Sea Island, Georgia. A copy of the agenda of the meeting and a preliminary draft of the minutes of the meeting are enclosed following the materials relating to the above "action items."

C. The Technology Subcommittee of the Advisory Committee has been actively studying and considering rule amendments relating to the implementation of electronic technology in the administration of bankruptcy cases and proceedings. The subcommittee met in San Antonio on January 20-21, 1994, where it received demonstrations from several experts on the bankruptcy noticing center and video conferencing. Another meeting was held in Sea Island, Georgia on February 23rd. The subcommittee considered the subject of filing, signing, and verification of documents by electronic means, and has made recommendations to the Advisory Committee regarding rule amendments to facilitate local experimentation with computer-to-computer document transmission. In particular, the Advisory Committee approved the subcommittee's recommendation to amend Rule 5005(a) to allow courts, by local rule, to permit the filing, signing, or verification of documents by electronic means, subject technical standards, if any, adopted by the Judicial Conference. These proposed amendments to Rule 5005(a) are included in the package of proposed amendments for which the Advisory Committee is requesting permission to publish for comment. The subcommittee will meet again this summer for the purpose of preparing a written report to the Advisory Committee on several issues relating to technology.

D. The Subcommittee on Forms, which is reviewing the official bankruptcy forms, will be meeting in Philadelphia on June 6, 1994. The subcommittee will be focusing primarily on making the official forms clearer and in assuring that notices issued in a bankruptcy case are more easily understood, particularly by individuals who are not lawyers.

E. In anticipation of the promulgation of the proposed amendments to Rules 8018 and 9029 requiring that local rules

conform to a uniform numbering system, the Subcommittee on Local Rules has been working together with Patricia S. Channon, Senior Attorney in the Bankruptcy Judges Division of the Administrative Office, to devise such a numbering system. The subcommittee met on February, 23, 1994, and approved for presentation to the Advisory Committee a proposed numbering system that is tied to the numbers of the relevant national Bankruptcy Rules. That numbering system has been approved preliminarily by the Advisory Committee, but further work needs to be done. It is anticipated that a numbering system will be considered by the Advisory Committee at its next meeting in September 1994.

F. The Advisory Committee has been monitoring Congressional efforts to amend the Bankruptcy Rules. During the past few years, bills have been introduced that would amend Bankruptcy Rule 7004 dealing with service of process on federal depository institutions or on other business entities. On two occasions, letters have been written by the Chairman of the Standing Committee in opposition to these bills. In addition, Francis F. Szczebak, Chief of the Bankruptcy Judges Division of the Administrative Office, testified in opposition to such a provision contained in a comprehensive bankruptcy reform bill (S.540). On April 21, 1994, the Senate passed S.540 (with revisions from the prior text of S.540 on which Mr. Szczebak testified). Section 112 of S.540 would require that service on federal depository institutions be by certified mail addressed to an officer unless (a) the institution has filed an appearance (in which case the attorney shall be served by first class mail), (b) the court orders -- on application served on the institution by certified mail -- that service may be by first class mail sent to an officer designated by the institution, or (c) the institution has waived its right to service by certified mail. A copy of section 112 of S.540 is enclosed for your information. It is not certain as to whether a similar provision will be included in proposed legislation in the House or whether S.540 will become enacted.

At its meeting in February 1994, the Advisory Committee approved a preliminary draft of Rule 7004 that continues the current practice of allowing service by first class mail, rather than requiring service by certified mail, with respect to all entities. The proposed amendments to Rule 7004 recommended by the Advisory Committee are included in the package of proposed amendments for which the Advisory Committee has requested permission to publish for comment.

Attachments:

1. Memorandum from Judge Mannes to Judge Stotler dated May 12, 1994 with attachments relating to proposed amendments to Rules 8018, 9029, and 9037.

2. Memorandum from Judge Mannes to Judge Stotler dated May 14, 1994, requesting permission to publish preliminary draft of proposed amendments to twelve Bankruptcy Rules.
3. Agenda of Advisory Committee meeting of February 24-25, 1994.
4. Draft of minutes of Advisory Committee meeting of February 1994.
5. Section 112 of S.540 (Bankruptcy Amendments Act of 1994)

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TO: Honorable Alicemarie H. Stotler, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable Paul Mannes, Chair
Advisory Committee on Bankruptcy Rules

SUBJECT: Proposed Amendments to Bankruptcy Rules 8018,
9029, and 9037

DATE: May 12, 1994

On behalf of the Advisory Committee on Bankruptcy Rules, it is my honor to transmit proposed amendments to Bankruptcy Rules 8018, 9029, and 9037 for consideration by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

These proposed amendments are unusual in their origin. Whereas original recommendations for proposed amendments usually derive from the advisory committee and are presented to the Standing Committee for its approval, the original suggestions for proposed amendments governing local rules, procedure when there is no controlling law, and technical amendments originated from the Standing Committee with a view toward uniformity among the four bodies of federal procedural rules -- Appellate, Bankruptcy, Civil, and Criminal. As a result of the coordinated efforts of the reporter to the standing committee and the reporters to the advisory committees, the language of the proposed amendments on these subjects is substantially the same in all four bodies of federal rules.

The Advisory Committee on Bankruptcy Rules favors the proposed amendments to Rules 8018 and 9029 relating to local rules and procedure when there is no controlling law, and recommends that they be adopted with one change discussed below. At the Standing Committee meeting in June 1993, however, the Advisory Committee on Bankruptcy Rules expressed its opposition

to the proposed new Rule 9037 on technical amendments. The other advisory committees and the Standing Committee did not share that opposition at that time and, pursuant to the Standing Committee's request, the Advisory Committee on Bankruptcy Rules prepared for publication the preliminary draft of Rule 9037.

The preliminary draft of the proposed amendments to Bankruptcy Rules 8018, 9029, and 9037 was published for comment by the bench and bar in October 1993. Comments were received from seven respondents. A summary of these comments is enclosed. A public hearing was scheduled to be held in Washington, D.C. on March 25, 1994, but was canceled because of the lack of witnesses requesting to testify. Based on the comments received, it does not appear that the proposed amendments are the subject of substantial controversy among the bench and bar.

At its meeting on February 24-25, 1994, the Advisory Committee again reviewed the preliminary draft of these proposed amendments and voted to recommend one change in the published language. The Advisory Committee voted unanimously to change the word "negligent" to "nonwillful" in the proposed amendments to Rules 8018(a)(2) and 9029(a)(2), and in the related committee notes, dealing with local rules imposing requirements of form. In particular, the Advisory Committee recommends that the published language of Rules 8018(a)(2) and 9027(a)(2) be changed as follows:

"A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a ~~negligent~~ nonwillful failure to comply with the requirement."

If this change is made, the following sentence in the committee note also should be changed.

"The proscription of paragraph (2) is narrowly drawn -- covering only violations ~~attributable to negligence~~ that are not willful and only those involving local rules directed to matters of form."

The Advisory Committee believes that a finding of negligence should not have to be made for a violation to be protected by this rule. Other nonwillful violations also should be protected, such as when the failure to follow a local rule relating to form is due to reasons beyond the lawyer's control, or in other situations in which the lawyer's conduct does not rise to the level of negligence.

Attachments:

Proposed Amendments to Bankruptcy Rules 8018, 9029, and 9037
Summary of Comments

PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 8018. Rules by Circuit Councils and
District Courts; Procedure When There is
No Controlling Law

1 (a) Local Rules by Circuit
2 Councils and District Courts.
3 (1) Circuit councils which have
4 authorized bankruptcy appellate panels
5 pursuant to 28 U.S.C. § 158(b) and the
6 district courts may, ~~by action of acting~~
7 by a majority of the judges of the
8 council or district court, make and
9 amend rules governing practice and
10 procedure for appeals from orders or
11 judgments of bankruptcy judges to the
12 respective bankruptcy appellate panel or
13 district court, ~~not inconsistent~~
14 consistent with -- but not duplicative
15 of -- Acts of Congress and the rules of

*New matter is underlined; matter
to be omitted is lined through.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

16 this Part VIII. Local rules must
17 conform to any uniform numbering system
18 prescribed by the Judicial Conference of
19 the United States. Rule 83
20 F.R.Civ.P. governs the procedure for
21 making and amending rules to govern
22 appeals.

23 (2) A local rule imposing a
24 requirement of form must not be enforced
25 in a manner that causes a party to lose
26 rights because of a nonwillful failure
27 to comply with the requirement. ~~In all~~
28 ~~eases not provided for by rule, the~~
29 ~~district court or the bankruptcy~~
30 ~~appellate panel may regulate its~~
31 ~~practice in any manner not inconsistent~~
32 ~~with these rules.~~

33 (b) Procedure When There is No
34 Controlling Law. A bankruptcy appellate

3 FEDERAL RULES OF BANKRUPTCY PROCEDURE

35 panel or district judge may regulate
36 practice in any manner consistent with
37 federal law, these rules, Official
38 Forms, and local rules of the circuit
39 council or district court. No sanction
40 or other disadvantage may be imposed for
41 noncompliance with any requirement not
42 in federal law, federal rules, Official
43 Forms, or the local rules of the circuit
44 council or district court unless the
45 alleged violator has been furnished in
46 the particular case with actual notice
47 of the requirement.

COMMITTEE NOTE

The amendments to this rule conform to the amendments to Rule 9029. See Committee Note to the amendments to Rule 9029.

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

**Rule 9029. Local Bankruptcy Rules;
Procedure When There is No Controlling
Law**

1 (a) Local Bankruptcy Rules.

2 (1) Each district court by action
3 of acting by a majority of the its
4 district judges thereof may make and
5 amend rules governing practice and
6 procedure in all cases and proceedings
7 within the district court's bankruptcy
8 jurisdiction which are not inconsistent
9 consistent with -- but not duplicative
10 of -- Acts of Congress and these rules
11 and which do not prohibit or limit the
12 use of the Official Forms. Rule 83
13 F.R.Civ.P. governs the procedure for
14 making local rules. A district court
15 may authorize the bankruptcy judges of
16 the district, subject to any limitation
17 or condition it may prescribe and the
18 requirements of 83 F.R.Civ.P., to make

5 FEDERAL RULES OF BANKRUPTCY PROCEDURE

19 and amend rules of practice and
20 procedure which are ~~not inconsistent~~
21 consistent with -- but not duplicative
22 of -- Acts of Congress and these rules
23 and which do not prohibit or limit the
24 use of the Official Forms. Local rules
25 must conform to any uniform numbering
26 system prescribed by the Judicial
27 Conference of the United States.

28 (2) A local rule imposing a
29 requirement of form must not be enforced
30 in a manner that causes a party to lose
31 rights because of a nonwillful failure
32 to comply with the requirement. In all
33 ~~eases not provided for by rule, the~~
34 ~~court may regulate its practice in any~~
35 ~~manner not inconsistent with the~~
36 ~~Official Forms or with these rules or~~
37 ~~those of the district in which the court~~
38 ~~acts.~~

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

39 (b) Procedure When There is No
40 Controlling Law. A judge may regulate
41 practice in any manner consistent with
42 federal law, these rules, Official
43 Forms, and local rules of the district.
44 No sanction or other disadvantage may be
45 imposed for noncompliance with any
46 requirement not in federal law, federal
47 rules, Official Forms, or the local
48 rules of the district unless the alleged
49 violator has been furnished in the
50 particular case with actual notice of
51 the requirement.

COMMITTEE NOTE

Subdivision (a). This rule is amended to reflect the requirement that local rules be consistent not only with applicable national rules but also with Acts of Congress. The amendment also states that local rules should not repeat applicable national rules and Acts of Congress.

7 FEDERAL RULES OF BANKRUPTCY PROCEDURE

The amendment also requires that the numbering of local rules conform with any uniform numbering system that may be prescribed by the Judicial Conference. Lack of uniform numbering might create unnecessary traps for counsel and litigants. A uniform numbering system would make it easier for an increasingly national bar and for litigants to locate a local rule that applies to a particular procedural issue.

Paragraph (2) of subdivision (a) is new. Its aim is to protect against loss of rights in the enforcement of local rules relating to matters of form. For example, a party should not be deprived of a right to a jury trial because its attorney, unaware of -- or forgetting-- a local rule directing that jury demands be noted in the caption of the case, includes a jury demand only in the body of the pleading. The proscription of paragraph (2) is narrowly drawn -- covering only violations that are not willful and only those involving local rules directed to matters of form. It does not limit the court's power to impose substantive penalties upon a party if it or its attorney stubbornly or repeatedly violates a local rule, even one involving merely a matter of form. Nor does it affect the court's power to enforce local rules that involve more than mere matters of form -- for example, a local rule requiring

8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

that a party demand a jury trial within a specified time period to avoid waiver of the right to a trial by jury.

Subdivision (b). This rule provides flexibility to the court in regulating practice when there is no controlling law. Specifically, it permits the court to regulate practice in any manner consistent with federal law, with rules adopted under 28 U.S.C. § 2075, with Official Forms, and with the district's local rules.

This rule recognizes that courts rely on multiple directives to control practice. Some courts regulate practice through the published Federal Rules and the local rules of the court. Some courts also have used internal operating procedures, standing orders, and other internal directives. Although such directives continue to be authorized, they can lead to problems. Counsel or litigants may be unaware of various directives. In addition, the sheer volume of directives may impose an unreasonable barrier. For example, it may be difficult to obtain copies of the directives. Finally, counsel or litigants may be unfairly sanctioned for failing to comply with a directive. For these reasons, the amendment to this rule disapproves imposing any sanction or other disadvantage on a person for

9 FEDERAL RULES OF BANKRUPTCY PROCEDURE

noncompliance with such an internal directive, unless the alleged violator has been furnished in a particular case with actual notice of the requirement.

There should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular judge unless the party or attorney has actual notice of those requirements. Furnishing litigants with a copy outlining the judge's practices -- or attaching instructions to a notice setting a case for conference or trial -- would suffice to give actual notice, as would an order in a case specifically adopting by reference a judge's standing order and indicating how copies can be obtained.

10 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 9037. Technical and Conforming
Amendments

1 The Judicial Conference of the
2 United States may amend these rules to
3 correct errors in spelling, cross-
4 references, or typography, or to make
5 technical changes needed to conform
6 these rules to statutory changes.

COMMITTEE NOTE

This rule is added to enable the Judicial Conference to make minor technical amendments to these rules without having to burden the Supreme Court and Congress with reviewing such changes. This delegation of authority will relate only to uncontroversial, nonsubstantive matters.

**SUMMARY OF COMMENTS ON THE PROPOSED AMENDMENTS
TO BANKRUPTCY RULES 8018, 9029, AND 9037**

The Advisory Committee on Bankruptcy Rules received seven comments from the bench and bar in response to the publication of the preliminary draft of proposed amendments to Bankruptcy Rules 8018, 9029, and 9037. Listed below are the names and addresses of the commentators and a summary of each comment.

- (1) Edith Broida, Esq.
P.O. Box 5941
Washington, D.C. 20016
(March 30, 1994)

Ms. Broida disagrees with Rule 9029(b) in that it permits a judge to regulate practice before him or her. "All judges need to be instructed in judicial management and have the rules set for them." She also criticizes a particular local rule in the Southern District of Florida that permits a bankruptcy judge to hear a motion to dismiss an appeal from an order of the bankruptcy court based on the appellant's failure to comply with procedures for designating the issues. Ms. Broida also comments on several other issues that are not related to Bankruptcy Rules 8018, 9029, or 9037.

- (2) Honorable Samuel L. Bufford
United States Bankruptcy Court
Central District of California
Roybal Building
255 East Temple Street, Suite 1580
Los Angeles, CA 90012
(December 2, 1993)

Judge Bufford agrees with the comments contained in the letter of Judge Lisa Hill Fenning (see below), except that he believes that "local" local rules (standing orders) should be actively discouraged. Judge Bufford discusses the experience in the Central District of California where procedures of some 20 bankruptcy judges have been coordinated, resulting in publicized local rules rather than judge-specific standing orders.

Judge Bufford also comments that the numbering of local rules to correspond to the national Bankruptcy Rules "would introduce a needless difficulty for lawyers in finding the appropriate local rule." In the Central District, local rules have been numbered to correspond to the local district court rules. "A renumbering of the bankruptcy rules to correspond to the Federal Rules of Bankruptcy Procedure will make it more difficult for a non-specialist to find the appropriate local rule." He then recommends two ways to ameliorate this difficulty. First, the Bankruptcy Rules should be re-numbered to correspond to the Federal Rules of Civil Procedure and, second, district courts should be required to number their local rules to correspond to the Fed.R.Civ.P. Then "the entire federal practice

could be synchronized to make it easy for non-specialists to find the appropriate rule."

- (3) Robert F. Connor, Clerk
United States Bankruptcy Court
Western District of Missouri
United States Courthouse - Room 201
811 Grand Avenue
Kansas City, Missouri 64106
(Comments contained in a memorandum to
Mark Van Allsburg and Ellen A. Johanson
dated April 13, 1994)

Mr. Connor indicates that the local rules in the Western District of Missouri were recently revised to employ a numbering system consistent with the numbering system of the national Bankruptcy Rules. He thinks that conforming local rule numbers to the national rules is "achievable and could be made more palatable by allowing an extended period of time to reach that goal." However, Mr. Connor warns that "there may be more to the proposed rules than meets the eye and any proposed system adopted in the future may be more of a hinderance than a help. Most local practitioners are familiar with the rules and the practice in their respective districts. In trying to satisfy the needs of a relatively small body of practitioners with multidistrict practice the new rules have the greater potential of causing confusion among the larger body of local attorneys who would have to adjust to a new numbering system and a new style of operating practice."

He also explained the current practice in that court with respect to requirements of form. "It is the practice of this court to first advise parties of their offense by means of a deficiency notice and/or orders to correct or show cause before imposing any sanction or disadvantage on that party." This would seem to satisfy the notice requirement of proposed Rules 8018(a)(2) and 9029(a)(2).

- (4) Grace H. Dupree, Esq.
Office of the Clerk
United States Bankruptcy Court
Eastern District of Kentucky
P.O. Box 1111
Lexington, Kentucky 40588-1111
(April 19, 1994)

Ms. Dupree agrees that local rules should not duplicate national rules or legislation. She also comments that the proposed new Rule 9037 (Technical Amendments) seems to be practical and efficient. Finally, she agrees that a uniform numbering system for local rules should be adopted and suggests that the numbering system used in the Eastern District of

Kentucky, which is tied to the national Bankruptcy Rules, be used.

- (5) Honorable Lisa Hill Fenning
United States Bankruptcy court
Central District of California
Roybal Building
255 East Temple Street, Suite 1682
Los Angeles, CA 90012
(November 24, 1993)

Judge Fenning supports the goal of developing a uniform numbering system for local rules, and says that her court is awaiting guidance from the Advisory Committee as to how to renumber their rules. However, Judge Fenning urges the Advisory Committee to first consider whether the present numbering system for the national Bankruptcy Rules is "logical and consistent." She believes that the national rules have evolved in a sequence that perhaps no longer reflects a useful structure or order. Once any necessary renumbering of the national rules is completed, then local rules could be numbered to correlate with the national rules.

Judge Fenning also comments that proposed Rule 9029(b) appears to sanction the practice of "local" local rules (standing orders), which she opposes. She believes that judges should strive to reach consensus for uniform procedures to be included in local rules, rather than having numerous judge-specific orders. She supports the principle that a litigant should not be punished for noncompliance with a standing order if there is no notice of the requirement. Judge Fenning also comments that standing orders could interfere with the functioning of the clerk's office by imposing additional demands upon the clerk's staff to enforce special requirements of particular judges. She recommends that Rule 9029(b) be amended further to provide that "any regulations adopted by an individual judge must not interfere with the functioning of the clerk's office."

- (6) Honorable Henry L. Hess, Jr.
United States Bankruptcy Court
District of Oregon
1001 S.W. Fifth Avenue, #900
Portland, Oregon 97204
(January 5, 1994)

Judge Hess proposes that the Bankruptcy Rules expressly require that "local rules must conform to the numbering system of the Bankruptcy Rules." The local rules in the District of Oregon already conform to the national Bankruptcy Rules. "What better way to provide uniformity than to require local rules to use the same numbering system as the national rules?"

(7) John L.A. Lyddane, Esq.
Martin, Clearwater & Bell
220 East 42nd Street
New York, NY 10017-5842
(December 2, 1994)

Mr. Lyddane writes: "I agree that these amendments are essentially non-controversial and see no reason why they should not be implemented."

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EVIDENCE RULES

TO: Honorable Alicemarie H. Stotler, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable Paul Mannes, Chair
Advisory Committee on Bankruptcy Rules

SUBJECT: Proposed Amendments to Bankruptcy Rules 1006,
1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005,
7004, 8008, and 9006

DATE: May 14, 1994

On behalf of the Advisory Committee on Bankruptcy Rules, it is my honor to submit proposals to amend the Federal Rules of Bankruptcy Procedure.

I request that the preliminary draft of these proposed amendments be circulated to the bench and bar and that views and comments be solicited. I further request that the Advisory Committee be permitted to conduct a public hearing to afford an opportunity for the oral presentation of views.

The proposed amendments are as follows:

(1) Rule 1006(a) is amended to include within the scope of the rule any fees prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b) that is payable to the clerk upon commencement of a case. This fee will be payable in installments in the same manner that the filing fee prescribed by 28 U.S.C. § 1930(a) is payable in installments pursuant to Rule 1006(b).

(2) Rule 1007(c) is amended to provide that schedules and statements filed prior to conversion of a case to another chapter are treated as filed in the converted case, regardless of the chapter the case was in prior to conversion. The rule now provides that schedules and statements filed prior to conversion

are treated as filed in the converted case only if the case was in chapter 7 prior to conversion. Since 1991, the same official forms for schedules and statements have been used in all cases and, therefore, limiting this provision to cases that were in chapter 7 prior to conversion is no longer necessary.

(3) Rule 1019(7) is abrogated. Subdivision (7) provides that, in a case converted to chapter 7, an extension of time to file claims against a surplus granted pursuant to Rule 3002(c)(6) shall be applicable to postpetition, pre-conversion claims. This subdivision is abrogated to conform to the abrogation of Rule 3002(c)(6) and the addition of Rule 3002(d).

(4) Rule 2002, which governs notices, is amended in several respects. Subdivision (a)(4) -- requiring notice of the time for filing claims against a surplus in a chapter 7 case -- is abrogated to conform to the abrogation of Rule 3002(c)(6) (see below). To reduce expenses in administering chapter 7 cases, subdivision (f)(8) is amended to eliminate the need to mail to all parties copies of the summary of the chapter 7 trustee's final account. Subdivision (h), which permits the court to eliminate the need to send notices to creditors who have failed to file claims, is revised in several ways: (1) to clarify that such an order may not be issued if creditors still have time to file claims because it is a "no asset" case and a "notice of no dividend" has been sent; (2) to clarify that an order under this subdivision does not affect notices that must be sent to parties who are not creditors; (3) to provide that a creditor who is an infant, an incompetent person, or a governmental unit is entitled to receive notices if the time for that creditor to file a claim has been extended under Rule 3002(c)(1) or (c)(2); and (4) to delete cross-references to Rule 2002(a)(4) and Rule 3002(c)(6), which are being abrogated.

(5) Rule 2015(b) and (c) are amended to clarify that a debtor in possession or trustee in a chapter 12 case, or a debtor engaged in business in a chapter 13 case, does not have to file an inventory of the debtor's property unless the court so directs.

(6) Rule 3002(c)(6) is abrogated, and new Rule 3002(d) is added, to make the rule consistent with section 726 of the Bankruptcy Code which provides that, under certain circumstances, a creditor holding a claim that has been tardily filed may be entitled to receive a distribution in a chapter 7 case.

(7) Rule 3016(a) is abrogated because it could have the effect of extending the debtor's exclusive period for filing a chapter 11 plan without the court, after notice and a hearing, finding cause for an extension as is required by section 1121(d) of the Bankruptcy Code.

(8) Rule 4004(c) is amended to delay the debtor's discharge in a chapter 7 case if there is a pending motion to extend the time for filing a complaint objecting to discharge or if the filing fee has not been paid in full.

(9) Rule 5005(a) is amended to authorize local rules that permit documents to be filed, signed, or verified by electronic means, provided that such means are consistent with technical standards, if any, established by the Judicial Conference. The rule also provides that a document filed by electronic means constitutes a "written paper" for the purpose of applying the rules and constitutes a public record open to examination. The purpose of these amendments is to facilitate the filing, signing, or verification of documents by computer-to-computer transmission without the need to reduce them to paper form in the clerk's office.

(10) Rule 7004 is amended to conform to the 1993 amendments to Rule 4 of the Federal Rules of Civil Procedure. First, cross-references to subdivisions of F.R.Civ.P. 4 are changed to conform to the new structure of the Civil Rule. Second, substantive changes to Rule 4 F.R.Civ.P. that became effective in 1993 are implemented in Rule 7004 to the extent that they are consistent with the continuing availability under Rule 7004 of service by first class mail as an alternative to the methods of personal service provided under Rule 4 F.R.Civ.P.

(11) Rule 8008 is amended to permit district courts and, where bankruptcy appellate panels have been authorized, circuit councils to adopt local rules to allow filing, signing, or verification of documents by electronic means in the same manner and with the same limitations that are applicable to bankruptcy courts under Rule 5005(a), as amended.

(12) Rule 9006 is amended to conform to the abrogation of Rule 2002(a)(4) and the renumbering of Rule 2002(a)(8).

Drafts of the proposed amendments, and Advisory Committee Notes explaining them, are attached.

Rule 1006. Filing Fee

1 (a) GENERAL REQUIREMENT. Every petition shall be
2 accompanied by the ~~prescribed~~ filing fee except as provided
3 in subdivision (b) of this rule. For the purpose of this
4 rule, "filing fee" means the filing fee prescribed by 28
5 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by
6 the Judicial Conference of the United States pursuant to 28
7 U.S.C. § 1930(b) that is payable to the clerk upon the
8 commencement of a case under the Code.

9 (b) PAYMENT OF FILING FEE IN INSTALLMENTS.

10 (1) Application for Permission to Pay Filing Fee
11 in Installments. A voluntary petition by an individual
12 shall be accepted for filing if accompanied by the
13 debtor's signed application stating that the debtor is
14 unable to pay the filing fee except in installments.
15 The application shall state the proposed terms of the
16 installment payments and that the applicant has neither
17 paid any money nor transferred any property to an
18 attorney for services in connection with the case.

19 (2) Action on Application. Prior to the meeting
20 of creditors, the court may order the filing fee paid
21 to the clerk or grant leave to pay in installments and
22 fix the number, amount and dates of payment. The
23 number of installments shall not exceed four, and the
24 final installment shall be payable not later than 120
25 days after filing the petition. For cause shown, the

26 court may extend the time of any installment, provided
27 the last installment is paid not later than 180 days
28 after filing the petition.

29 (3) Postponement of Attorney's Fees. The filing
30 fee must be paid in full before the debtor or chapter 13
31 trustee may pay an attorney or any other person who
32 renders services to the debtor in connection with the
33 case.

COMMITTEE NOTE

1 The Judicial Conference prescribes miscellaneous
2 fees pursuant to 28 U.S.C. § 1930(b). In 1992, a
3 \$30 miscellaneous administrative fee was prescribed
4 for all chapter 7 and chapter 13 cases. The
5 Judicial Conference fee schedule was amended in 1993
6 to provide that an individual debtor may pay this
7 fee in installments.

8 Subdivision (a) of this rule is amended to
9 clarify that every petition must be accompanied by
10 any fee prescribed under 28 U.S.C. 1930(b) that is
11 required to be paid when a petition is filed, as
12 well as the filing fee prescribed by 28 U.S.C. §
13 1930(a). By defining "filing fee" to include
14 Judicial Conference fees, the procedures set forth
15 in subdivision (b) for paying the filing fee in
16 installments will also apply with respect to any
17 Judicial Conference fee required to be paid at the
18 commencement of the case.

**Rule 1007. Lists, Schedules and
Statements; Time Limits**

* * *

1 (c) TIME LIMITS. The schedules and statements,
2 other than the statement of intention, shall be
3 filed with the petition in a voluntary case, or if
4 the petition is accompanied by a list of all the
5 debtor's creditors and their addresses, within 15
6 days thereafter, except as otherwise provided in
7 subdivisions (d), (e), and (h) of this rule. In an
8 involuntary case the schedules and statements, other
9 than the statement of intention, shall be filed by
10 the debtor within 15 days after entry of the order
11 for relief. Schedules and statements ~~previously~~
12 filed prior to the conversion of a case to another
13 chapter in a pending chapter 7 case shall be deemed
14 filed in a superseding the converted case unless the
15 court directs otherwise. Any extension of time for
16 the filing of the schedules and statements may be
17 granted only on motion for cause shown and on notice
18 to the United States trustee and to any committee
19 elected pursuant to § 705 or appointed pursuant to §
20 1102 of the Code, trustee, examiner, or other party
21 as the court may direct. Notice of an extension
22 shall be given to the United States trustee and to
23 any committee, trustee, or other party as the court
24 may direct.

COMMITTEE NOTE

1 Subdivision (c) is amended to provide that
2 schedules and statements filed prior to the
3 conversion of a case to another chapter shall be
4 deemed filed in the converted case, whether or not
5 the case was a chapter 7 case prior to conversion.
6 This amendment is in recognition of the 1991
7 amendments to the Official Forms that abrogated the
8 Chapter 13 Statement and made the same forms for
9 schedules and statements applicable in all cases.

10
11 This subdivision also contains a technical
12 correction. The phrase "superseded case" creates
13 the erroneous impression that conversion of a case
14 results in a new case that is distinct from the
15 original case. The effect of conversion of a case
16 is governed by § 348 of the Code.

**Rule 1019. Conversion of Chapter 11
Reorganization Case, Chapter 12 Family
Farmer's Debt Adjustment Case, or Chapter 13
Individual's Debt Adjustment Case to
Chapter 7 Liquidation Case**

1 When a chapter 11, chapter 12, or chapter 13 case
2 has been converted or reconverted to a chapter 7 case:

3 * * * *

4 ~~(7) EXTENSION OF TIME TO FILE CLAIMS AGAINST~~
5 ~~SURPLUS. Any extension of time for the filing of claims~~
6 ~~against a surplus granted pursuant to Rule 3002(c)(6),~~
7 ~~shall apply to holders of claims who failed to file~~
8 ~~their claims within the time prescribed, or fixed by the~~
9 ~~court pursuant to paragraph (6) of this rule, and notice~~
10 ~~shall be given as provided in Rule 2002.~~

COMMITTEE NOTE

1 Subdivision (7) is abrogated to conform to the
2 abrogation of Rule 3002(c)(6) and the addition of
3 Rule 3002(d). If a proof of claim is tardily filed
4 after a case is converted to a chapter 7 case, the
5 claim may be allowed to the extent that the
6 creditor, as the holder of an unsecured claim proof
7 of which is tardily filed, is entitled to receive a
8 distribution under section 726 of the Code.

**Rule 2002. Notices to Creditors, Equity Security
Holders, United States, and
United States Trustee**

1 (a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST.

2 Except as provided in subdivisions (h), (i) and (l) of
3 this rule, the clerk, or some other person as the court
4 may direct, shall give the debtor, the trustee, all
5 creditors and indenture trustees not less than 20 days
6 notice by mail of (1) the meeting of creditors pursuant
7 to § 341 of the Code; (2) a proposed use, sale, or
8 lease of property of the estate other than in the
9 ordinary course of business, unless the court for cause
10 shown shortens the time or directs another method of
11 giving notice; (3) the hearing on approval of a
12 compromise or settlement of a controversy other than
13 approval of an agreement pursuant to Rule 4001(d),
14 unless the court for cause shown directs that notice not
15 be sent; ~~(4) the date fixed for the filing of claims~~
16 ~~against a surplus in an estate as provided in Rule~~
17 ~~3002(e)(6);~~ (5) (4) in a chapter 7 liquidation, a
18 chapter 11 reorganization case, and a chapter 12 family
19 farmer debt adjustment case, the hearing on the
20 dismissal of the case, unless the hearing is pursuant to
21 § 707(b) of the Code, or the conversion of the case to
22 another chapter; ~~(6)~~ (5) the time fixed to accept or
23 reject a proposed modification of a plan; ~~(7)~~ (6)

24 hearings on all applications for compensation or
25 reimbursement of expenses totalling in excess of \$500;
26 ~~(8)~~ (7) the time fixed for filing proofs of claims
27 pursuant to Rule 3003(c); and ~~(9)~~ (8) the time fixed
28 for filing objections and the hearing to consider
29 confirmation of a chapter 12 plan.

30 * * * * *
31 (c) CONTENT OF NOTICE.

32 * * * * *
33 (2) Notice of Hearing on Compensation. The notice
34 of a hearing on an application for compensation or
35 reimbursement of expenses required by subdivision ~~(a)(7)~~
36 (a)(6) of this rule shall identify the applicant and the
37 amounts requested.

38 * * * * *
39 (f) OTHER NOTICES. Except as provided in subdivision
40 (1) of this rule, the clerk, or some other person as the
41 court may direct, shall give the debtor, all creditors, and
42 indenture trustees notice by mail of

43 * * * * *

44 (8) a summary of the trustee's final report and
45 ~~account~~ in a chapter 7 case if the net proceeds realized
46 exceed \$1,500.

47 * * * * *

48 (h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In
49 a chapter 7 case, ~~the court may,~~ after 90 days following the

50 first date set for the meeting of creditors pursuant to §
51 341 of the Code or, if a notice of insufficient assets to
52 pay a dividend has been given to creditors pursuant to
53 subdivision (e) of this rule, after 90 days following the
54 mailing of a notice of the time for filing claims pursuant
55 to Rule 3002(c)(5), the court may, direct that all notices
56 required by subdivision (a) of this rule, ~~except clause (4)~~
57 ~~thereof,~~ be mailed only to the debtor, the trustee, all
58 indenture trustees, creditors whose claims who hold claims
59 for which proofs of claim have been filed, and creditors, if
60 any, who are still permitted to file claims by reason of an
61 extension granted under Rule ~~3002(e)-(6)~~ 3002(c)(1) or
62 (c)(2).

63 (i) NOTICES TO COMMITTEES. Copies of all notices
64 required to be mailed under this rule shall be mailed to the
65 committees elected pursuant to § 705 or appointed pursuant
66 to § 1102 of the Code or to their authorized agents.
67 Notwithstanding the foregoing subdivisions, the court may
68 order that notices required by subdivision (a)(2), (3) and
69 ~~(7)~~ (6) of this rule be transmitted to the United States
70 trustee and be mailed only to the committees elected
71 pursuant to § 705 or appointed pursuant to § 1102 of the
72 Code or to their authorized agents and to the creditors and
73 equity security holders who serve on the trustee or debtor
74 in possession and file a request that all notices be mailed
75 to them. A committee appointed pursuant to § 1114 shall

76 receive copies of all notices required by subdivisions
77 (a) (1), ~~(a) (6)~~ (a) (5), (b), (f) (2), and (f) (7), and such
78 other notices as the court may direct.

79 * * * *

80 (k) NOTICES TO UNITED STATES TRUSTEE. Unless the case
81 is a chapter 9 municipality case or unless the United States
82 trustee otherwise requests, the clerk, or some other person
83 as the court may direct, shall transmit to the United States
84 trustee notice of the matters described in subdivisions
85 (a) (2), (a) (3), ~~(a) (5)~~ (a) (4), ~~(a) (9)~~ (a) (8), (b), (f) (1),
86 (f) (2), (f) (4), (f) (6), (f) (7), and (f) (8) of this rule and
87 notice of hearings on all applications for compensation or
88 reimbursement of expenses. Notices to the United States
89 trustee shall be transmitted within the time prescribed in
90 subdivision (a) or (b) of this rule. The United States
91 trustee shall also receive notice of any other matter if
92 such notice is requested by the United States trustee or
93 ordered by the court. Nothing in these rules shall require
94 the clerk or any other person to transmit to the United
95 States trustee any notice, schedule, report, application or
96 other document in a case under the Securities Investor
97 Protection Act, 15 U.S.C. § 78aaa et seq.

* * * *

COMMITTEE NOTE

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

5 rule are amended accordingly.

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

14 Subdivision (h) is amended (1) to provide that
15 an order under this subdivision may not be issued if a
16 notice of no dividend is given under Rule 2002(e) and
17 the time for filing claims has not expired as provided
18 in Rule 3002(c)(5); (2) to clarify that notices required
19 to be mailed by subdivision (a) to parties other than
20 creditors must be mailed to those entities despite an
21 order issued under subdivision (h); (3) to provide that
22 if the court, pursuant to Rule 3002(c)(1) or 3003(c)(2),
23 has granted an extension of time to file a proof of
24 claim, the creditor for whom the extension has been
25 granted must continue to receive notices despite an
26 order issued under subdivision (h); and (4) to delete
27 references to subdivision (a)(4) and Rule 3002(c)(6),
28 which have been abrogated.

Rule 2015. Duty to Keep Records, Make Reports,
and Give Notice of Case

* * * *

1 (b) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In
2 a chapter 12 family farmer's debt adjustment case, the
3 debtor in possession shall perform the duties prescribed in
4 clauses ~~(1)-(4)~~ (2)-(4) of subdivision (a) of this rule and,
5 if the court directs, shall file and transmit to the United
6 States trustee a complete inventory of the property of the
7 debtor within the time fixed by the court. If the debtor is
8 removed as debtor in possession, the trustee shall perform
9 the duties of the debtor in possession prescribed in this
10 paragraph.

11 (c) CHAPTER 13 TRUSTEE AND DEBTOR.

12 (1) Business Cases. In a chapter 13 individual's
13 debt adjustment case, when the debtor is engaged in
14 business, the debtor shall perform the duties prescribed by
15 clauses ~~(1)-(4)~~ (2)-(4) of subdivision (a) of this rule and,
16 if the court directs, shall file and transmit to the United
17 States trustee a complete inventory of the property of the
18 debtor within the time fixed by the court.

19 * * * *

COMMITTEE NOTE

1 Under subdivision (a)(1), the trustee in a
2 chapter 7 case and, if the court directs, the
3 trustee or debtor in possession in a chapter 11 case
4 is required to file and transmit to the United
5 States trustee a complete inventory of the debtor's

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property within 30 days after qualifying as trustee or debtor in possession, unless such an inventory has already been filed. Subdivisions (b) and (c) are amended to clarify that a debtor in possession and trustee in a chapter 12 case, and a debtor in a chapter 13 case where the debtor is engaged in business, are not required to file and transmit to the United States trustee a complete inventory of the property of the debtor unless the court so directs. If the court so directs, the court also fixes the time limit for filing and transmitting the inventory.

Rule 3002. Filing Proof of Claim or Interest

1 (a) NECESSITY FOR FILING. An unsecured creditor or
2 an equity security holder must file a proof of claim or
3 interest in accordance with this rule for the claim or
4 interest to be allowed, except as provided in Rules 1019(3),
5 3003, 3004 and 3005.

6 * * * *

7 (c) TIME FOR FILING. In a chapter 7 liquidation,
8 chapter 12 family farmer's debt adjustment, or chapter 13
9 individual's debt adjustment case, a proof of claim shall be
10 filed within 90 days after the first date set for the
11 meeting of creditors called pursuant to § 341(a) of the
12 Code, except as follows:

13 * * * *

14 ~~(6) In a chapter 7 liquidation case, if a~~
15 ~~surplus remains after all claims allowed have~~
16 ~~been paid in full, the court may grant an~~
17 ~~extension of time for the filing of claims~~
18 ~~against the surplus not filed within the time~~
19 ~~herein above prescribed.~~

20 (d) TARDILY FILED CLAIM IN CHAPTER 7 CASE.

21 Notwithstanding subdivision (a) of this rule, if a creditor
22 files a proof of claim in a chapter 7 case after the
23 expiration of the time for filing the proof of claim
24 prescribed in subdivision (c) of this rule, the creditor, as

25 the holder of an unsecured claim proof of which is tardily
26 filed, is entitled to receive a distribution to the extent
27 provided under section 726 of the Code.

COMMITTEE NOTE

1 The abrogation of subdivision (c)(6) and the
2 addition of subdivision (d) are designed to make this
3 rule consistent with § 726 of the Code. Section
4 726(a)(2)(C) and § 726(a)(3) recognize that in a chapter
5 7 case a creditor holding a claim that has been tardily
6 filed may be entitled to receive a distribution.

7 This amendment is not intended to resolve the
8 issue of whether a claim of the kind entitled to
9 priority under § 507 of the Code has the right to
10 priority in distribution under § 726(a)(1) if the proof
11 of claim is tardily filed. Compare, e.g., In re Century
12 Boat Co., 986 F.2d 154 (6th Cir. 1993), with In re
13 Mantz, 151 B.R. 928 (9th Cir. BAP 1993). The resolution
14 of this issue and any other issues regarding priority in
15 distribution are left to the courts as matters of
16 substantive law and statutory interpretation.

**Rule 3016. Filing of Plan and
Disclosure Statement in Chapter 9 Municipality
and Chapter 11 Reorganization Cases**

1 ~~(a) TIME FOR FILING PLAN. A party in interest,~~
2 ~~other than the debtor, who is authorized to file a plan~~
3 ~~under § 1121(e) of the Code may not file a plan after entry~~
4 ~~of an order approving a disclosure statement unless~~
5 ~~confirmation of the plan relating to the disclosure~~
6 ~~statement has been denied or the court otherwise directs.~~

7 **(b) (a) IDENTIFICATION OF PLAN.** Every proposed plan and
8 any modification thereof shall be dated and, in a chapter 11
9 case, identified with the name of the entity or entities
10 submitting or filing it.

11 ~~(e) (b) DISCLOSURE STATEMENT.~~ In a chapter 9 or 11
12 case, a disclosure statement pursuant to § 1125 or evidence
13 showing compliance with § 1126(b) of the Code shall be filed
14 with the plan or within a time fixed by the court.

COMMITTEE NOTE

1 Section 1121(c) gives a party in interest the right
2 to file a chapter 11 plan after expiration of the period
3 when only the debtor may file a plan. Under § 1121(d),
4 the exclusive period in which only the debtor may file a
5 plan may be extended, but only if a party in interest so
6 requests and the court, after notice and a hearing,
7 finds cause for an extension. Subdivision (a) is
8 abrogated because it could have the effect of extending
9 the debtor's exclusive period for filing a plan without
10 satisfying the requirements of § 1121(d). The
11 abrogation of subdivision (a) does not affect the
12 court's discretion with respect to the scheduling of
13 hearings on the approval of disclosure statements when
14 more than one plan has been filed.

Rule 4004. Grant or Denial of Discharge

* * * *

1 (c) GRANT OF DISCHARGE. In a chapter 7 case, on
2 expiration of the time fixed for filing a complaint
3 objecting to discharge and the time fixed for filing a
4 motion to dismiss the case pursuant to Rule 1017(e), the
5 court shall forthwith grant the discharge unless (1) the
6 debtor is not an individual, (2) a complaint objecting to
7 the discharge has been filed, (3) the debtor has filed a
8 waiver under § 727(a)(10), ~~or~~ (4) a motion to dismiss the
9 case under Rule 1017(e) is pending, (5) a motion to extend
10 the time for filing a complaint objecting to discharge is
11 pending, or (6) the debtor has not paid in full the filing
12 fee prescribed by 28 U.S.C. § 1930(a) and any fee prescribed
13 by the Judicial Conference of the United States pursuant to
14 28 U.S.C. § 1930(b) that is payable to the clerk upon the
15 commencement of a case under the Code. Notwithstanding the
16 foregoing, on motion of the debtor, the court may defer the
17 entry of an order granting a discharge for 30 days and, on
18 motion within such period, the court may defer entry of the
19 order to a date certain.

* * * *

COMMITTEE NOTE

1 Subsection (c) is amended to delay entry of the
2 order of discharge if a motion under Rule 4004(b) to
3 extend the time for filing a complaint objecting to
4 discharge is pending. This subdivision also is amended

5 to delay entry of the discharge order if the debtor has
6 not paid in full the filing fee and the administrative
7 fee required to be paid upon the commencement of the
8 case. If the debtor is authorized to pay the fees in
9 installments in accordance with Rule 1006, the discharge
10 order will not be entered until the final installment
11 has been paid.

**Rule 5005. Filing and Transmittal of
Papers**

1 (a) FILING.

2 (1) Place of Filing. The lists, schedules, statements,
3 proofs of claim or interest, complaints, motions,
4 applications, objections and other papers required to be
5 filed by these rules, except as provided in 28 U.S.C. §
6 1409, shall be filed with the clerk in the district where
7 the case under the Code is pending. The judge of that court
8 may permit the papers to be filed with the judge, in which
9 event the filing date shall be noted thereon, and they shall
10 be forthwith transmitted to the clerk. The clerk shall not
11 refuse to accept for filing any petition or other paper
12 presented for the purpose of filing solely because it is not
13 presented in proper form as required by these rules or any
14 local rules or practices.

15 (2) Filing by Electronic Means. A court by local rule
16 may permit documents to be filed, signed, or verified by
17 electronic means, provided such means are consistent with
18 technical standards, if any, established by the Judicial
19 Conference of the United States. A document filed by
20 electronic means in accordance with this rule constitutes a
21 written paper for the purpose of applying these rules, the
22 Federal Rules of Civil Procedure made applicable by these
23 rules, and § 107 of the Code.

* * * *

COMMITTEE NOTE

1 The rule is amended to permit, but not require,
2 courts to adopt local rules that allow filing, signing,
3 or verifying of documents by electronic means. However,
4 such local rules must be consistent with technical
5 standards, if any, promulgated by the Judicial
6 Conference of the United States.
7

8 An important benefit to be derived by permitting
9 filing by electronic means is that the extensive volume
10 of paper received and maintained as records in the
11 clerk's office will be reduced substantially. With the
12 receipt of electronic data transmissions by computer,
13 the clerk may maintain records electronically without
14 the need to reproduce them in tangible paper form.
15

16 Judicial Conference standards governing the
17 technological aspects of electronic filing will result
18 in uniformity among judicial districts to accommodate an
19 increasingly national bar. By delegating to the
20 Judicial Conference the establishment and future
21 amendment of national standards for electronic filing,
22 the Supreme Court and Congress will be relieved of the
23 burden of reviewing and promulgating detailed rules
24 dealing with complex technological standards. Another
25 reason for leaving to the Judicial Conference the
26 formulation of technological standards for electronic
27 filing is that advances in computer technology occur
28 often, and changes in the technological standards may
29 have to be implemented more frequently than would be
30 feasible by rule amendment under the Rules Enabling Act
31 process.
32

33 It is anticipated that standards established by the
34 Judicial Conference will govern technical specifications
35 for electronic data transmission, such as requirements
36 relating to the formatting of data, speed of
37 transmission, means to transmit copies of supporting
38 documentation, and security of communication procedures.
39 In addition, before procedures for electronic filing are
40 implemented, standards must be established to assure the
41 proper maintenance and integrity of the record and to
42 provide appropriate access and retrieval mechanisms.
43 These matters will be governed by local rules until
44 system-wide standards are adopted by the Judicial
45 Conference.
46

47 Rule 9009 requires that the Official Forms shall be
48 observed and used "with alterations as may be
49 appropriate." Compliance with local rules and any
50 Judicial Conference standards with respect to the

51 formatting or presentation of electronically transmitted
52 data, to the extent that they do not conform to the
53 Official Forms, would be an appropriate alteration
54 within the meaning of Rule 9009.
55

56 These rules require that certain documents be in
57 writing. For example, Rule 3001 states that a proof of
58 claim is a "written statement." Similarly, Rule 3007
59 provides that an objection to a claim "shall be in
60 writing." Pursuant to the new subdivision (a)(2), any
61 requirement under these rules that a paper be written
62 may be satisfied by filing the document by electronic
63 means, notwithstanding the fact that the clerk neither
64 receives nor prints a paper reproduction of the
65 electronic data.
66

67 Section 107(a) of the Code provides that a "paper"
68 filed in a case is a public record open to examination
69 by an entity at reasonable times without charge, except
70 as provided in § 107(b). The amendment to subdivision
71 (a)(2) provides that an electronically filed document is
72 to be treated as such a public record.
73

74 Although under subdivision (a)(2) electronically
75 filed documents may be treated as written papers or as
76 signed or verified writings, it is important to
77 emphasize that such treatment is only for the purpose of
78 applying these rules. In addition, local rules and
79 Judicial Conference standards regarding verification
80 must satisfy the requirements of 28 U.S.C. § 1746.

**Rule 7004. Process; Service of Summons,
Complaint**

1 (a) SUMMONS; SERVICE; PROOF OF SERVICE. Rule ~~4(a), (b),~~
2 ~~(e)(2)(C)(i), (d), (e) and (g)-(j)~~ 4(a), (b), (c)(1),
3 (d)(1), (e)-(j), (l), and (m) F.R.Civ.P. applies in
4 adversary proceedings. Personal service pursuant to Rule
5 ~~4(d)~~ 4(e)-(j) F.R.Civ.P. may be made by any person not less
6 than 18 years of age who is not a party and the summons may
7 be delivered by the clerk to any such person.

8 (b) SERVICE BY FIRST CLASS MAIL. In addition to the
9 methods of service authorized by Rule ~~4(e)(2)(C)(i) and (d)~~
10 4(e)-(j) F.R.Civ.P., service may be made within the United
11 States by first class mail postage prepaid as follows:

12 (1) Upon an individual other than an infant or
13 incompetent, by mailing a copy of the summons and
14 complaint to the individual's dwelling house or usual
15 place of abode or to the place where the individual
16 regularly conducts a business or profession.

17 (2) Upon an infant or an incompetent person, by
18 mailing a copy of the summons and complaint to the
19 person upon whom process is prescribed to be served by
20 the law of the state in which service is made when an
21 action is brought against such defendant in the courts
22 of general jurisdiction of that state. The summons and
23 complaint in such case shall be addressed to the person
24 required to be served at that person's dwelling house or
25 usual place of abode or at the place where the person

26 regularly conducts a business or profession.

27 (3) Upon a domestic or foreign corporation or upon a
28 partnership or other unincorporated association, by
29 mailing a copy of the summons and complaint to the
30 attention of an officer, a managing or general agent, or
31 to any other agent authorized by appointment or by law
32 to receive service of process and, if the agent is one
33 authorized by statute to receive service and the statute
34 so requires, by also mailing a copy to the defendant.

35 (4) Upon the United States, by mailing a copy of the
36 summons and complaint addressed to the civil process
37 clerk at the office of the United States attorney for
38 the district in which the action is brought and by
39 mailing a copy of the summons and complaint to also the
40 Attorney General of the United States at Washington,
41 District of Columbia, and in any action attacking the
42 validity of an order of an officer or an agency of the
43 United States not made a party, by also mailing a copy
44 of the summons and complaint to such officer or agency.
45 The court shall allow a reasonable time for service
46 under this subdivision for the purpose of curing the
47 failure to mail a copy of the summons and complaint to
48 multiple officers, agencies, or corporations of the
49 United States if the plaintiff has mailed a copy of the
50 summons and complaint either to the civil process clerk
51 at the office of the United States attorney or to the

52 Attorney General of the United States.

53 (5) Upon any officer or agency of the United States,
54 by mailing a copy of the summons and complaint to the
55 United States as prescribed in paragraph (4) of this
56 subdivision and also to the officer or agency. If the
57 agency is a corporation, the mailing shall be as
58 prescribed in paragraph (3) of this subdivision of this
59 rule. The court shall allow a reasonable time for
60 service under this subdivision for the purpose of curing
61 the failure to mail a copy of the summons and complaint
62 to multiple officers, agencies, or corporations of the
63 United States if the plaintiff has mailed a copy of the
64 summons and complaint either to the civil process clerk
65 at the office of the United States attorney or to the
66 Attorney General of the United States. If the United
67 States trustee is the trustee in the case and service is
68 made upon the United States trustee solely as trustee,
69 service may be made as prescribed in paragraph (10) of
70 this subdivision of this rule.

71 (6) Upon a state or municipal corporation or other
72 governmental organization thereof subject to suit, by
73 mailing a copy of the summons and complaint to the
74 person or office upon whom process is prescribed to be
75 served by the law of the state in which service is made
76 when an action is brought against such a defendant in
77 the courts of general jurisdiction of that state, or in

78 the absence of the designation of any such person or
79 office by state law, then to the chief executive officer
80 thereof.

81 (7) Upon a defendant of any class referred to in
82 paragraph (1) or (3) of this subdivision of this rule,
83 it is also sufficient if a copy of the summons and
84 complaint is mailed to the entity upon whom service is
85 prescribed to be served by any statute of the United
86 States or by the law of the state in which service is
87 made when an action is brought against such defendant in
88 the court of general jurisdiction of that state.

89 (8) Upon any defendant, it is also sufficient if a
90 copy of the summons and complaint is mailed to an agent
91 of such defendant authorized by appointment or by law to
92 receive service of process, at the agent's dwelling
93 house or usual place of abode or at the place where the
94 agent regularly carries on a business or profession and,
95 if the authorization so requires, by mailing also a copy
96 of the summons and complaint to the defendant as
97 provided in this subdivision.

98 (9) Upon the debtor, after a petition has been filed
99 by or served upon the debtor and until the case is
100 dismissed or closed, by mailing copies of the summons
101 and complaint to the debtor at the address shown in the
102 petition or statement of affairs or to such other
103 address as the debtor may designate in a filed writing

104 and, if the debtor is represented by an attorney, to the
105 attorney at the attorney's post-office address.

106 (10) Upon the United States trustee, when the
107 United States trustee is the trustee in the case and
108 service is made upon the United States trustee solely as
109 trustee, by mailing a copy of the summons and complaint
110 to an office of the United States trustee or another
111 place designated by the United States trustee in the
112 district where the case under the Code is pending.

113 (c) SERVICE BY PUBLICATION. If a party to an adversary
114 proceeding to determine or protect rights in property in the
115 custody of the court cannot be served as provided in Rule
116 ~~4(d) or (i)~~ 4(e)-(j) F.R.Civ.P. or subdivision (b) of this
117 rule, the court may order the summons and complaint to be
118 served by mailing copies thereof by first class mail postage
119 prepaid, to the party's last known address and by at least
120 one publication in such manner and form as the court may
121 direct.

122 (d) NATIONWIDE SERVICE OF PROCESS. The summons and
123 complaint and all other process except a subpoena may be
124 served anywhere in the United States.

125 ~~(e) SERVICE ON DEBTOR AND OTHERS IN FOREIGN COUNTRY.~~
126 ~~The summons and complaint and all other process except a~~
127 ~~subpoena may be served as provided in Rule 4(d)(1) and~~
128 ~~(d)(3) F.R.Civ.P. in a foreign country (A) on the debtor,~~
129 ~~any person required to perform the duties of a debtor, any~~

130 ~~general partner of a partnership debtor, or any attorney who~~
131 ~~is a party to a transaction subject to examination under~~
132 ~~Rule 2017; or (B) on any party to an adversary proceeding to~~
133 ~~determine or protect rights in property in the custody of~~
134 ~~the court; or (C) on any person whenever such service is~~
135 ~~authorized by a federal or state law referred to in Rule~~
136 ~~4(e)(2)(C)(i) or (e) F.R.Civ.P.~~

137 ~~(f)~~ (e) SUMMONS: TIME LIMIT FOR SERVICE. If service is
138 made pursuant to Rule ~~4(d)(1)-(6)~~ 4(e)-(j) F.R.Civ.P. it
139 shall be made by delivery of the summons and complaint
140 within 10 days following issuance of the summons. If
141 service is made by any authorized form of mail, the summons
142 and complaint shall be deposited in the mail within 10 days
143 following issuance of the summons. If a summons is not
144 timely delivered or mailed, another summons shall be issued
145 and served.

146 (f) PERSONAL JURISDICTION. If the exercise of
147 jurisdiction is consistent with the Constitution and laws of
148 the United States, serving a summons or filing a waiver of
149 service in accordance with this rule or the subdivisions of
150 Rule 4 F.R.Civ.P. made applicable by these rules is
151 effective to establish personal jurisdiction over the person
152 of any defendant with respect to a case under the Code or a
153 civil proceeding arising under the Code, or arising in or
154 related to a case under the Code.

155 ~~(g) EFFECT OF AMENDMENT TO RULE 4 F.R.CIV.P. The~~

156 ~~subdivisions of Rule 4 F.R.Civ.P. made applicable by these~~
157 ~~rules shall be the subdivisions of Rule 4 F.R.Civ.P. in~~
158 ~~effect on January 1, 1990, notwithstanding any amendment to~~
159 ~~Rule 4 F.R.Civ.P. subsequent thereto.~~

COMMITTEE NOTE

1 The purpose of these amendments is to conform the
2 rule to the 1993 revisions of Rule 4 F.R.Civ.P. Rule
3 7004, as amended, continues to provide for service by
4 first class mail as an alternative to the methods of
5 personal service provided under Rule 4 F.R.Civ.P.

6 Rule 4(d)(2) F.R.Civ.P. provides a procedure by
7 which the plaintiff may request by first class mail that
8 the defendant waive service of the summons. This
9 procedure is not applicable in adversary proceedings
10 because it is not necessary in view of the availability
11 of service by mail under Rule 7004(b). However, if a
12 written waiver of service of a summons is made in an
13 adversary proceeding, Rule 4(d)(1) F.R.Civ.P. applies so
14 that the defendant does not thereby waive any objection
15 to the venue or the jurisdiction of the court over the
16 person of the defendant.

17 Subdivisions (b)(4) and (b)(5) are amended to
18 conform to the 1993 amendments to Rule 4(i)(3)
19 F.R.Civ.P., which protect the plaintiff from the hazard
20 of losing a substantive right because of failure to
21 comply with the requirements of multiple service when
22 the United States or an officer, agency, or corporation
23 of the United States is a defendant. These subdivisions
24 also are amended to require that the summons and
25 complaint be addressed to the civil process clerk at the
26 office of the United States attorney.

27 Subdivision (e), which has governed service in a
28 foreign country, is abrogated and Rule 4(f) and (h)(2)
29 F.R.Civ.P., as substantially revised in 1993, are made
30 applicable in adversary proceedings.

31 The new subdivision (f) is consistent with the
32 1993 amendments to F.R.Civ.P. 4(k)(2). It clarifies
33 that service or filing a waiver of service in accordance
34 with this rule or the applicable subdivisions of

35 F.R.Civ.P. 4 is sufficient to establish personal
36 jurisdiction over the defendant. See the committee note
37 to the 1993 amendments to Rule 4 F.R.Civ.P.

38 Subdivision (g) is abrogated. This subdivision was
39 promulgated in 1991 so that anticipated revisions to
40 Rule 4 F.R.Civ.P. would not affect service of process in
41 adversary proceedings until further amendment to Rule
42 7004.

Rule 8008. Filing and Service

1 (a) FILING. Papers required or permitted to be filed
2 with the clerk of the district court or the clerk of the
3 bankruptcy appellate panel may be filed by mail addressed to
4 the clerk, but filing shall not be timely unless the papers
5 are received by the clerk within the time fixed for filing,
6 except that briefs shall be deemed filed on the day of
7 mailing. An original and one copy of all papers shall be
8 filed when an appeal is to the district court; an original
9 and three copies shall be filed when an appeal is to a
10 bankruptcy appellate panel. The district court or
11 bankruptcy appellate panel may require that additional
12 copies be furnished. Rule 5005(a)(2) applies to papers
13 filed with the clerk of the district court or the clerk of
14 the bankruptcy appellate panel if filing by electronic means
15 is authorized by local rule promulgated pursuant to Rule
16 8018.

* * * *

COMMITTEE NOTE

1 This rule is amended to permit, but not require,
2 district courts and, where bankruptcy appellate panels
3 have been authorized, circuit councils to adopt local
4 rules that allow filing of documents by electronic
5 means, subject to the limitations contained in Rule
6 5005(a)(2). See the committee note to the 199__
7 amendments to Rule 5005.

Rule 9006. Time

* * * *

1 (c) REDUCTION.

2 * * * *

3 (2) Reduction Not Permitted. The court may not reduce
4 the time for taking action under Rules ~~2002(a)(4) and (a)(8)~~
5 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2),
6 (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

* * * *

COMMITTEE NOTE

1 Subdivision (c)(2) is amended to conform to the
2 abrogation of Rule 2002(a)(4) and the renumbering of
3 Rule 2002(a)(8) to Rule 2002(a)(7).