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

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TO: **Honorable David F. Levi, Chair**
Standing Committee on Rules of Practice and Procedure

FROM: **Honorable Thomas S. Zilly, Chair**
Advisory Committee on Bankruptcy Rules

DATE: **May 2, 2005**

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

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 10-11, 2005, in Sarasota, Florida. The purpose of this report is to outline actions taken by the Advisory Committee at its spring meeting. The Advisory Committee considered public comments regarding the preliminary draft of proposed amendments to Bankruptcy Rules 1009, 2002(g), 4002, 5005(c), 7004(b)(9), 7004(g), 9001, and 9036, and Schedule I of Official Form 6 that were published in August 2004 and the preliminary draft of the proposed amendment to Rule 5005(a)(2) that was published in November 2004. After review of the public comments, the Committee gave its final approval to various proposed amendments which we ask the Standing Committee to approve. The proposed amendments to Rules 2002(g), 9001, and 9036 were approved by the Committee by an email ballot and by the Standing Committee before the meeting.

The Advisory Committee also studied a number of proposals to amend the Bankruptcy Rules. After careful consideration, the Advisory Committee requests that the Standing Committee approve for publication a preliminary draft of proposed amendments to Bankruptcy Rules 3001, 3007, 4001, and 6006, and new Rules 6003, 9005.1, and 9037. The Style Consultants to the Standing Committee offered a number of suggestions that were considered by the Advisory Committee's Style Subcommittee, and the proposals set out below in the Action Items section of the report reflect those joint efforts.

The Advisory Committee has also been following the status of the pending Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law 109-8. The act was passed by the Senate on March 10, by the House of Representatives on April 14, and signed by the President on April 20. As a result the Committee considered both at the meeting and in subsequent telephone conference call meetings the issue of whether the new law would conflict with any pending proposed amendments to the Bankruptcy Rules.

II. Rules previously approved or pending and possible conflict with the pending legislation.

(1) Rule 2002(g)(4) - Notices to creditors.

This amendment is now pending before Congress with a fast track effective date of December 1, 2005. The Committee reviewed the proposed rule in light of the recently enacted bankruptcy legislation and concluded that there was no conflict. The Committee has previously advised the Standing Committee of this conclusion.

(2) Rule 4008 - Reaffirmation Agreements.

This amendment was previously pending before the Supreme Court with a proposed effective date of December 1, 2005. The Committee reviewed this proposed rule in light of the legislation and concluded the proposed rule would conflict with the new law. The Committee recommended to the Standing Committee that the proposed Rule 4008 be withdrawn. As a result, the Supreme Court did not send the rule to Congress.

III. Action items

(A) Proposed Amendments to Bankruptcy Rules 1009, 4002, 5005(a)(2), 5005(c), 7004(b)(9), and 7004(g) Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference.

The Advisory Committee on Bankruptcy Rules recommends that the Standing Committee approve the following amendments for submission to the Judicial Conference.

1. *Public Comment*.

The proposed amendments to Bankruptcy Rules 1009, 4002, 5005(c), 7004(b)(9), and 7004(g), and Schedule I of Official Form 6 were published for comment in August 2004. The proposed amendment to Rule 5005(a)(2) was published for comment in November 2004. Public hearings on the proposed amendments were scheduled for February 3 and February 7, 2005. There was only one timely request to appear at a

hearing and that commentator agreed to submit his comments in writing. The comments on the proposals are summarized immediately following the text of each rule to which the particular comment applied. After review of the comments, the Advisory Committee approved the following proposed amendments either as published or with slight changes that are described in the Changes Made After Publication section. The Committee recommends to the Standing Committee that final approval be given to each of the following amendments:

2. *Synopsis of Proposed Amendments:*

(a) Rule 1009. This amendment would require the debtor to submit a corrected social security number when the debtor becomes aware of an error in a previously submitted statement.

(b) Rule 4002. This amendment would require a debtor to bring certain documentation to the section 341 first meeting of creditors to establish current income and ownership of financial accounts, as well as the debtor's most recently filed federal income tax return. After reviewing many public comments to this proposal the Advisory Committee added three amendments to the published rule and modified the Committee Note.

(c) Rule 5005(a)(2). This amendment would allow courts to permit or require electronic filings. The Advisory Committee voted to amend the published rule to add a new second sentence as follows: "Courts requiring electronic filing shall reasonably accommodate parties who cannot feasibly comply with the mandatory electronic filing rule". This change was made in light of the public comments expressing concerns about the burden upon pro se and other litigants who would find it difficult to comply with mandatory filing requirements.

(d) Rule 5005(c). This amendment adds district judges and the clerk of the bankruptcy appellate panel to a list of persons who can transmit erroneously delivered papers to the clerk of the bankruptcy court.

(e) Rule 7004(b)(9). This amendment removes "or statement of affairs" from the rule. The Advisory Committee voted to amend the Committee Note to explain the removal of this language.

(f) Rule 7004(g). This amendment revises the method of service of a summons and complaint on the attorney for the debtor whenever an entity serves the debtor with a summons and complaint.

(g) An amendment to Schedule I to Form 6 was approved by the Advisory Committee. After the meeting, however, the amendment was referred

back to the Forms Subcommittee for further review in light of the bankruptcy legislation.

3. *Text of Proposed Amendments to Rules 1009, 4002, 5005(a)(2), 5005(c), 7004(b)(9), and 7004(g)*

The text of the proposed amendments and Committee Notes, summaries of the comments which apply to each of the proposed amendments, and changes made since publication are attached to this report.

(B) Request Approval for Publication of Preliminary Draft of Proposed Amendments to Bankruptcy Rules 3001, 3007, 4001, and 6006, and new Rules 6003, 9005.1, and 9037

The Advisory Committee approved the following proposed rule amendments and recommends to the Standing Committee that these proposals be published in August 2005.

(1) Rule 3001. The Advisory Committee approved amendments to Rule 3001(c) and (d) to add page limitations on proof of claims filings and require summaries if over the page limitations.

(2) Rule 9005.1. The Advisory Committee approved this new rule dealing with a constitutional challenge to a statute or law to make pending new Civil Rule 5.1 applicable to all contested matters and other proceedings in a case.

(3) Rule 9037. The Advisory Committee approved the new privacy rule which modified the proposed template rule and Committee Note considered by each Advisory Committee. This proposed rule is intended to protect privacy and security concerns relating to electronic filing and the public availability of documents filed electronically, as required by the E-Government Act of 2002. The proposed rule tracks the Revised Privacy Template Rule developed by the E-Government Subcommittee with modifications deemed necessary for bankruptcy purposes.

(4) The Advisory Committee approved amendments to Rules 3007, 4001, and 6006, and new Rule 6003. These proposals, with some amendments by the Advisory Committee, were the result of the efforts of the Joint Subcommittee on Chapter 11 and Venue issues. This is a joint effort of the Committee on the Administration of the Bankruptcy System and the Advisory Committee to analyze choice of venue and other aspects of large chapter 11 cases.

(a) Rule 3007. The proposed amendment would place restrictions upon, and provide procedures for, omnibus objections to claims. In summary, the proposal would prohibit omnibus objections unless the court permits it or

the objection is one of the class of permitted omnibus objections generally consisting of non-substantive objections , such as duplicate claims or late claims.

(b) Rule 4001. The proposed amendment relates to the use of cash collateral, obtaining debtor-in-possession financing, and approval of related agreements.

(c) Rule 6003. The proposed new rule would limit the type of motions and relief that can be granted during the first 20 days of a case.

(d) Rule 6006. The proposed amendment would place restrictions upon, and provide procedures for, omnibus assumptions, assignments and rejections of executory contracts and unexpired leases.

A copy of these proposed amendments are attached to this report.

IV Information items

(A) Proposed Rules Previously Approved by the Standing Committee for Publication in August 2005

The Standing Committee has previously approved for publication in August 2005 amendments to the following bankruptcy rules:

(1) Rule 1014 - a proposed amendment to confirm that a court on its own motion may initiate (after notice and a hearing) a change of venue.

(2) Rule 3007 - a proposed amendment to clarify the procedure when a party objects to a claim and also attempts to seek affirmative relief at the same time.

(3) Rule 7007.1 - a proposed amendment to clarify that a party must file a corporate ownership statement with its initial paper filed with the court in an adversary proceeding.

(B) Draft Minutes

Draft minutes of the March 2005 meeting of the Advisory Committee are attached.

ATTACHMENTS:

Text of proposed amendments recommended for approval and Committee Notes, summaries of the comments on each proposed amendment, and changes made since publication

Text of proposed amendments recommended for publication and Committee Notes
Draft Minutes of March 2005 Advisory Committee Meeting

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUTPCY PROCEDURE*

Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements.

* * * * *

(c) STATEMENT OF SOCIAL SECURITY NUMBER

If a debtor becomes aware that the statement of social security number submitted under Rule 1007(f) is incorrect, the debtor shall promptly submit an amended verified statement setting forth the correct social security number. The debtor shall give notice of the amendment to all of the entities required to be included on the list filed under Rule 1007(a)(1) or (a)(2).

~~(c)~~ (d) TRANSMISSION TO UNITED STATES TRUSTEE

The clerk shall ~~forthwith~~ promptly transmit to the United States trustee a copy of every amendment filed or submitted under ~~pursuant to~~ subdivision (a), (b), or (c) ~~or (b)~~ of this

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

rule.

COMMITTEE NOTE

Rule 2002(a)(1) provides that the notice of the § 341 meeting of creditors include the debtor's social security number. It provides creditors with the full number while limiting publication of the social security number otherwise to the final four digits of the number to protect the debtor's identity from others who do not have the same need for that information. If, however, the social security number that the debtor submitted under Rule 1007(f) is incorrect, then the only notice to the entities contained on the list filed under Rule 1007(a)(1) or (a)(2) would be incorrect. This amendment adds a new subdivision (c) that directs the debtor to submit a verified amended statement of social security number and to give notice of the new statement to all entities in the case who received the notice containing the erroneous social security number.

Former subdivision (c) becomes subdivision (d) and is amended to include new subdivision (c) amendments in the list of documents that the clerk must transmit to the United States trustee.

Other amendments are stylistic.

Public Comment on Proposed Amendments to Rule 1009:

1. Comment 04-BK-039 Submitted by the State Bar of California Committee on Federal Courts. The Committee supports the amendment without qualification.

Changes Made After Publication: No changes since publication.

Rule 4002. Duties of Debtor.

(a) GENERAL DUTIES. 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 1007;

(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 picture identification issued by a governmental unit and evidence of social security number(s), or provide a written statement that the documentation does not exist or is not in the debtor's possession;

(2) *Financial Information.* Unless the trustee or the United States trustee directs the debtor not to do so, every individual debtor shall bring to the meeting of creditors under § 341 and make available to the trustee an original or copy of the following documents, or provide a written statement that the documents do not exist or are not in the debtor's possession:

(A) evidence of current income, such as the most

recent pay stub;

(B) the debtor's most recently filed federal income tax return (including any attachments), or a transcript of the tax return; and

(C) 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.

COMMITTEE NOTE

The rule is amended to implement the directives of § 521 (3) and (4) of the Bankruptcy Code that the debtor cooperate with the trustee to permit the trustee to perform the trustee's duties and to provide the trustee with materials and documents as necessary to the administration of the estate or to determine if the debtor is entitled to a discharge. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521. The rule 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. 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.

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials would not be made available

to any other party in interest at the § 341 meeting of creditors. Some of the documents may contain otherwise private information that should not be disseminated. For example, the debtor's tax return may include social security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.

Public Comment on Proposed Amendments to Rule 4002:

The Committee received a significant number of comments on the proposed amendments to Rule 4002. The commentary was relatively evenly split between those who supported and those who opposed the proposals. The comments are described below and are subdivided into those in support of the amendments and those in opposition to the amendments.

Supporting Comments:

1. **Comment 04-BK-011 Submitted by Daniel J. Dell'Orto, Principal Deputy General Counsel of the Department of Defense** stated that he had no suggested changes to the proposed amendments of any of the rules (including Appellate and Civil Rules).

2. Comment 04-BK-002 Submitted by Mr. Jack Horsley offered a slightly more specific comment noting that the proposal was "well put," and that he would suggest also requiring the debtor "to submit a verified full financial statement." Since the schedules and statement of financial affairs essentially include a full financial statement that the debtor signs under penalty of perjury, it seems that Mr. Horsley's suggestion is already a part of the rules and forms.

3. Comment 04-BK-07 Submitted by Mr. Raymond P. Bell, Jr., Vice President, Bankruptcy & Probate Division of Creditors Interchange, supports the proposal and stated that it will increase the accuracy of data submitted in bankruptcy cases. He also indicates that the requirements of the

proposal would not be burdensome on debtors. Finally, he states that he agrees with the suggestions offered by Judge Steven W. Rhodes (see the discussion of Judge Rhodes' comments below), and he proposes that debtors should be penalized for any inaccuracies in the information that they provide.

4. Comment 04-BK-018 Submitted by Mr. John G. Redwine of the Knoxville TVA Employees Credit Union supports the proposal because debtors should be required to support the information contained in the schedules.

5. Comment 04-BK-004 Submitted by Ms. Maureen Scully of Kansas City, Missouri, supports the amendment because it requires debtors to bring to the meeting of creditors information that the debtor should already have compiled in preparation of the schedules and statement of financial affairs. Thus, this should not be burdensome for debtors. She also suggests that the availability of this information to trustees will expedite the process by eliminating the need for requests for the production of those documents after the meeting of creditors.

6. Comment 04-BK-006 Submitted by Anthony Michael Sabino, Associate Professor of Business Law at St. John's University and a partner in Sabino & Sabino, P.C., supports the proposed amendments to Rule 4002. He believes that the amendments improve the rule by stating plainly what a debtor must bring to the meeting of creditors. This will lead to better prepared debtors who will have the materials available. He states that unscrupulous debtors will fail to bring the documents thereby compelling adjournments and inefficiency. Mr. Sabino then states, however, that the amendments will "stamp out such abuses." He strongly supports the amendments.

7. One comment was submitted by the National Association of Chapter 13 Trustees (NACTT) and seven others were submitted by individuals who serve as chapter 13 trustees. These comments were very similar, and in several instances were identical. The individual trustees and the NACTT support the amendments because they will assist the trustees in fulfilling their responsibility to ensure the debtor's compliance with the Code while still providing sufficient flexibility for the trustee to relieve the debtor of the obligation to deliver the materials when, in the trustee's judgment, it may be too cumbersome for the debtor to comply. The comments also asserted that the rule amendment will "bring veracity and reliability to the schedules" without requiring formal and more costly methods of obtaining document production. The comments and their authors are:

Comment #	Date Received	Author
04-BK-028	2/15/05	NACTT (submitted by Henry Hildebrand & Paul Davidson)
04-BK-021	2/11/05	Amrane Cohen (Chapter 13 Trustee, Orange, CA)
04-BK-024	2/15/05	Paul Davidson (Chapter 13 Trustee, Shreveport, LA)
04-BK-029	2/17/05	Michael Kaplan (Chapter 13 Trustee, Robbinsville, NJ)
04-BK-030	2/17/05	Craig Shopneck (Chapter 13 Trustee, Cleveland, OH)
04-BK-031	2/17/05	Rod Danielson (Chapter 13 Trustee, Riverside, CA)
04-BK-032	2/17/05	Walter O'Cheskey (Chapter 13 Trustee, Lubbock, TX)
04-BK-033	2/17/05	Nancy Curry (Chapter 13 Trustee, Los Angeles, CA)
04-BK-042	2/22/05	Ms. Marilyn O. Marshall (Chapter 13 Trustee, Chicago, IL)
04-BK-043	2/28/05	Mr. Keith A. Rodriguez (Chapter 13 Trustee in Lafayette, LA)

8. Comment 04-BK-035 Submitted by Mr. James W. Boyd, Traverse City, Michigan. Mr Boyd, a chapter 7 trustee, supports the proposed amendment. He notes that the debtor needs to rely on pay stubs to accurately state his or her income, so requiring the debtor to bring that information to the meeting of creditors should not be burdensome. The same is true for bank statements and tax returns. They are readily available and permit the trustee to check the accuracy of the debtor's filings.

9. Comment 04-BK-001 Submitted by Hon. Steven W. Rhodes (Bankr. E.D. Mich.). Judge Rhodes submitted a very lengthy comment. His written comments on the proposed amendments to Rule 4002 total forty-two pages. He does not support the adoption of the proposed amendments, as such, but his commentary generally supports the concept of expanding the obligation of debtors

to provide additional materials to trustees 10 days prior to the § 341 meeting of creditors. He proposes requiring that the debtor submit the materials in advance of the creditors' meeting so that both the meeting and the case can be concluded as quickly as possible. In addition to the documents that the amended rule would require the debtor to bring to the meeting of creditors, Judge Rhodes recommends expanding the list to include, at the very least, the following additional documents

- certificates of title for vehicles, boats, and motor homes
- leases, mortgages, deeds, and other documents relating to real property
- life and property damage insurance policies
- asset appraisals
- divorce judgments and property settlements
- lawsuit papers and
- stock certificates.

10. Comment 04-BK-009 Hon. John A. Ninfo (Bankr. W.D.N.Y.) Judge Ninfo's submission to the Committee states that he is in complete agreement with Judge Rhodes' comments. He also notes that a standing order for the Western District of New York requires debtors to produce at the meeting of creditors titles to motor vehicles and boats, proofs of balances due on mortgages, the past two years' federal tax returns, and any real estate appraisals issued in the past two years. He indicates that the standing order has worked well for both trustees and debtors' counsel. The meetings are concluded without the need to adjourn them so that the materials can be examined.

Opposing Comments:

1. Comment 04-BK-003 Submitted by Mr. Henry Sommer. Mr. Sommer states that the proposal is an "abandonment of the presumption that debtors tell the truth in their sworn schedules." He compares the schedules to tax returns in which taxpayers are not required to supply evidence in support of their filed tax return. He also asserts that he is unaware of any studies that show that misstatements in bankruptcy schedules and statements of financial affairs "are due to widespread intentional concealment." He also states that, in his experience, debtors are as likely to innocently omit monthly expenses as they are to omit income. Mr. Sommer also argues that adoption of the proposal will increase the cost of filing for bankruptcy relief because it will require debtors to compile additional documents, including some that may not be available until after the

commencement of the case, and, in some instances, may not even be available by the time of the meeting of creditors. In particular, he notes that debtors may not have bank records showing the status of their accounts as of the date of the commencement of the case. He also expresses concern about the use of tax returns that include relatively dated information and may include otherwise private information about medical expenses of debtors and their dependents. Finally, he challenges whether there is evidence that the benefits that would follow from adoption of the proposals would exceed the costs that debtors would incur.

2. Comment 04-BK-005 Submitted by Mr. Walter Dahl opposes the proposal on several grounds. He indicates that he has been practicing for 22 years and has represented both debtors and creditors. His experience is that "the vast majority of debtors make materially honest disclosures to the court." He says that this is because they are "honest and good people [and their attorneys] cherish their bar admission and reputation far more than any transient gain obtainable by suborning perjury." He also suggests that trustees develop a sense that enables them to spot fraud and they address it when it appears. He also asserts that he has not witnessed any problem with trustees acquiring documents and materials through informal requests, and he has never heard of a court denying a trustee's request for a Rule 2004 examination. He concludes by suggesting Rule 4002 is not the way to improve the recovery of property, but that other resources be made available to trustees to seek hidden assets and the like.

3. Comment 04-BK-008 Submitted by Mr. William Jaworski, Jr. Mr Jaworski primarily represents debtors, and he believes that the proposed amendments will be unduly burdensome for debtors. He notes that these documents are routinely provided to trustees upon informal request, and he indicates that the changes could be particularly difficult for the unemployed and poorer debtors who are frequently poor record keepers.

4. Comment 04-BK-010 Submitted by Mr. Cary Gluesenkamp opposes the proposal. He represents debtors and states that the proposed rule would be unduly burdensome with little or no benefit to the estate. He also notes that the informal discovery process works sufficiently both in chapter 7 and chapter 13 cases.

5. Comment 04-BK-014 Submitted by Mr. Leonard Copeland did not indicate whether he is an attorney or whether he represents any particular category of participants in bankruptcy cases. He opposes the rule indicating that it is burdensome and would yield no meaningful benefit to the

system. He also suggests that informal discovery is sufficient as compared to a process in which every participant must bring the materials to the meeting. He asserts that the rule could lead to more disputes about whether the debtor has the materials and that this will simply increase costs.

6. Comment 04-BK-015 Submitted by Mr. David Andersen, Chairman of the Debtors Bar of West Michigan, is in opposition to the proposed amendments to Rule 4002. His comment included a chart of filing information for the Western District of Michigan which showed a 3% drop in the number of chapter 13 filings in 2004. He attributes that drop, at least in part, to a new policy among chapter 13 trustees to adjourn cases when debtors fail to provide certain documentation. This has led to increased expenses for debtors and their counsel making the process too costly for some debtors. He suggests that most debtors are not good record keepers and the need for the documents for many of them is minimal or nonexistent. He also notes that if a trustee believes that he or she needs a particular document in a particular case, it is made available if it can be found. While it is not clear from his comment which portion of the proposed amendment is most troublesome, he concludes that the increased requirements are improper and would likely cause a further reduction in the percentage of cases that proceed under chapter 13.

7. Comment 04-BK-019 submitted by Ms. Janet Lawson, a private attorney in California. She also states that the proposed amendments would be unduly burdensome since "few debtors have assets worth looking at." She suggests that internet searches for a debtor's assets is more cost effective especially since so few debtors have assets that would be appropriate to administer.

8. Comment 04-BK-026 Submitted by Ms. Julie Stodolka, a consumer debtors' attorney in California. Ms. Stodolka also believes that the requested information will be of limited use to the trustee and that many debtors will not be able to locate such documents, if they even exist. She also suggests that the submission of these documents will lengthen § 341 meetings. She suggests instead that funding for trustees be increased to support their efforts to identify problems with schedules and other disclosures. Finally, she notes that trustees will be faced with problems in handling the documents being provided to them. This could lead to increased susceptibility of debtors to identity theft contrary to the recent amendments intended to protect against that very thing (i.e. redaction of social security numbers and account numbers).

9. Comment 04-BK-027 Submitted by Ms. Cathy Moran, a California attorney who represents debtors. She notes that she also previously represented trustees. She believes that the rule is

unnecessary and should be left to informal resolution between trustees and debtors' counsel. She notes that she was able to persuade the court in her area to adopt a local rule that requires the debtor to produce documents identified by the trustee, and that the rule has worked well. She sees no need to adopt a rule that requires this production in each case.

10. Comment 04-BK-034 Submitted by Mr. Ronald Wilcox, another bankruptcy attorney from California. He notes his agreement with the position of Mr. Sommer in Comment 04-BK-003 that he is unaware of any study showing widespread intentional concealment of assets by debtors. He also cites a recent study that demonstrates, in his view, that bankruptcy is "less of a choice, and more of a last ditch effort to stay afloat." He asserts that there is a lack of evidence to support the need for a change in the rule.

11. Comment 04-BK-012 Submitted by Mr. John Anthony Malan objects to Rule 4002 as it relates to the concept of "income." Mr. Malan argues that since "income" is not defined in the Bankruptcy Code (or the Internal Revenue Code, in Mr. Malan's view), the rule should not require debtors to disclose such information. He notes that these disclosures can be used against a "person" in both civil and criminal actions. According to his comment, Mr. Malan is currently incarcerated in the Lake County, Indiana, jail.

12. Comment 04-BK-107 Submitted by the Chicago Bar Association. The Chicago Bar Association expressed a general objection to the proposed amendments to Rule 4002 on the grounds that the amendments constitute an undue burden on a debtor's right to privacy and are "an unwarranted burden shifting from a debtor to a trustee," as compared to current practice that effectively requires the trustee to request information whenever the trustee sees a need for the material. In many instances, this will result in the unnecessary production of materials that trustees neither need nor want. Notwithstanding its concerns, the Association offered suggestions to improve the proposal if the Committee decides to go forward with the rule. The Bar Association expressed concern that the proposed amendment may lead to inconsistent application due to the discretion given to trustees to waive the requirement to produce the materials. They suggest that while the Committee Note indicates that the rule provides flexibility for the trustee, the impact will be inconsistent practices even in the same district. They recommend deleting the waiver. The Association also has concerns about the protection of confidential or private information and proposes that the rule be further amended to state specifically that the trustee must treat the information "as confidential and shall not disclose such information to any party in interest unless

required under Rule 2004." This proposal may run afoul of § 704(7) of the Code which requires the trustee to furnish information about the estate to parties in interest. The Association also recommends that the materials be provided to the trustee at least five days prior to the meeting of creditors. As to tax returns, the Bar Association proposes that the rule be changed to provide for the production of a tax transcript rather than the tax returns themselves. The Association also asserts that the rule regarding the production of bank and similar accounts may require a debtor to do the impossible. These statements may not have been issued by the time of the meeting of creditors, so the Association suggests that the rule instead require the production of such a statement if it is available, and if it is not available, then the most recent statement of those accounts be produced. Finally, the Association expressed concern that the rule as proposed may include an exception that will swallow the rule. Specifically, it notes that the debtor can provide a written statement that the documents do not exist or that they debtor does not possess them. The Association is concerned that this will be used improperly by debtors to avoid their obligation to produce the documents. The comment suggests that the rule and note state that debtors must produce documents that a debtor can obtain without cost or that are available to the debtor electronically.

13. Comment 04-BK-023 Submitted by the National Bankruptcy Conference states that the proposed amendments will impose costs that outweigh the benefits from the rule. For example, they note that the rule requires the production of pay stubs but that the debtor's income may be from other sources such as the income from a business operated by the debtor or from a pension or social security. The rule, however, identifies pay stubs only as an example. The rule would seem to require a debtor engaged in business to show some evidence of income, and that may require more extensive effort than would be the case for a debtor who is an employee rather than an owner of a business. The Conference also expresses concern that the need to obtain and produce these materials will increase the number of times that a debtor and his or her counsel will have to meet to ensure that they have the necessary materials for production at the meeting of creditors. This will increase attorney fees for debtors with limited resources. They suggest as well that the information is unlikely to generate a sufficient benefit to the estate to justify the costs. Another cost identified is the additional time for § 341 meetings for trustees to review and evaluate the information and to conduct questioning on the materials supplied. They also express concern that the rule as proposed seems to recognize that these materials are available only to the trustee, but that any person present at the meeting will be able to hear the questions raised by the trustee regarding this information. They also assert that creditors would be able to obtain this information from the trustee creating a

"new class of discovery materials." The Conference also expressed concern about the introductory language in the rule that permits the trustee to "instruct" otherwise as to the production of the documents. They question whether the rules are giving the trustee a power that trustees do not have currently under the Code and Rules. Section 521(4), however, requires the debtor to surrender these materials to the trustee, so it seems that the rule is supported by a Code provision rather than being in opposition of the Code in some way. The Conference also objects to the amendments because in their view the amendments reverse the presumption of the honest debtor and insufficiently recognize that debtors must submit their disclosures under penalty of perjury. Since most debtors are of modest means, it is unlikely that there would be substantial recoveries as compared to the costs imposed by the amendments. The Conference states, as did the Chicago Bar Association, that if the Committee decides to proceed, it should amend the proposed rule to state that debtors need not obtain documents not in their possession, that the trustee and United States trustee cannot order debtors to take specific action or produce specific documents, and that provisions be built in to the rule to protect the privacy interests of the debtors and non-debtors.

14. Comment 04-BK-25 Submitted by the National Association of Consumer Bankruptcy Attorneys. The National Association of Consumer Bankruptcy Attorneys (NACBA) is an association of attorneys who represent consumer debtors. NACBA states generally that the bankruptcy system is in many ways similar to the tax system (a position noted by several others) in that it relies on declarations by the filer with respect to the required information, and that there is no reason to assume that bankruptcy debtors are any more dishonest than American taxpayers. Furthermore, these declarations are made under penalty of perjury and with the advice of counsel that criminal sanctions exist for false or fraudulent filings. More specifically, NACBA also identified the discretion granted to trustees as a shortcoming of the rule. They note that the introductory language might more aptly state that the trustee or United States trustee could inform debtors that they need not comply with the production requirements of the rule rather than state it as if the trustee has a greater authority to require the production of other material or the same material at another time. They also suggest moving the statement that debtors need not create documents that they do not have from the Committee Note to the text of the rule. As for bank statements, NACBA notes (as have others) that much of the material may not be available at the time of the meeting of creditors. This could lead to delays in the completion and filing of schedules so that the debtor's attorney can be sure of the status of these accounts as of the moment of the commencement of the case. As for tax returns, NACBA expressed concern that these documents contain sensitive information about not just the debtor, but dependents of the debtor. They also

assert that the delivery of these documents to trustees could lead to increased risk of identity theft. While the comment states that NACBA recognizes that trustees "strive to employ honest staff," the potential still exists for identity theft to occur. Presumably this same risk, however, would exist in the debtor's attorney's office as well. The additional information being provided to the trustee will also, in NACBA's estimation, extend the time for § 341 meetings and will place additional time burdens on trustees who will seek additional compensation thereby driving up the costs of bankruptcy filings.

15. Comment 04-BK-022 Submitted by Professors Robert Lawless, Steve Johnson, and Katherine Porter of the University of Nevada-Las Vegas. The professors object to the requirement that debtors bring their tax returns to the meeting of creditors. They assert that the amendment would render § 6103 of the Internal Revenue Code irrelevant and would upset the balance that Congress set under that provision for the confidentiality of tax returns. Specifically, they note that § 6103(e)(5) permits access to a debtor's tax returns by a trustee essentially for the purpose of preparing the bankruptcy estate's tax return. As for general requests for the return § 6102(e)(4) provides that the trustee can obtain the debtor's prior tax returns from the Secretary of the Treasury only if the Secretary determines, on the written request of the bankruptcy trustee, that the trustee has a material interest which will be affected by the information in the tax return.

Changes Made After Publication: The Advisory Committee, in response to a number of comments on the proposed amendment, revised subdivision (b) at lines 25 to 26. The published version of the rule provided that the debtor must bring certain materials to the § 341 meeting of creditors, "unless the trustee, United States trustee, or bankruptcy administrator instruct otherwise." The new language provides that the debtor's obligation to bring these materials to the meeting is inapplicable if "the trustee or the United States trustee directs the debtor not to do so." Some of the comments asserted that the published language could be read to mean that trustees could order or direct debtors to take other action or submit other materials. This would be an expansion of the power of the trustee, and that was not the Advisory Committee's intention. Therefore, the new language was adopted to recognize the authority of the trustee or United States trustee to control whether debtors need to bring the stated materials to the § 341 meeting, but not to require the submission of other materials by the debtor under the authority of Rule 4002 (b)(2).

The Advisory Committee also was persuaded that the debtor should be given the option of

providing to the trustee or the United States trustee either the debtor's tax return or a transcript of the return. This change is set out on lines 32-33 of the rule.

The Rule also was changed to delete the reference to the bankruptcy administrator that was included in the opening phrase of subdivision (b) of the rule. The reference is unnecessary in light of Rule 9035, and including the reference in subdivision (b) could create difficulties in other rules which do not include a reference to bankruptcy administrators, but instead rely on the operation of Rule 9035.

Rule 5005. Filing and Transmittal of Papers

(a) FILING

* * * * *

(2) *Filing by Electronic Means.* A court may by local rule permit <u>or require</u> documents to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. <u>Courts requiring electronic filing shall provide reasonable exceptions for parties who cannot feasibly comply with the mandatory electronic filing rule.</u> A document filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these

rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.

* * * * *

COMMITTEE NOTE

Amended Rule 5005(a)(2) acknowledges that many courts have required electronic filing by means of a standing order, procedures manual, or local rule. These local practices reflect the advantages that courts and most litigants realize from electronic filings. Courts requiring electronic filing must make reasonable accommodations for persons for whom electronic filing of documents constitutes an unreasonable denial of access to the courts.
Experience with the rule will facilitate convergence on uniform exceptions in an amended Rule 5005(a)(2).

Public Comment on Proposed Amendment to Rule 5005(a):

1. Comment 04-BK-003 Submitted by Mr. Henry Sommer. Mr. Sommer asserts that the rule should provide exceptions for both pro se filers and attorneys who do not generally appear in bankruptcy cases. These attorneys may be assisting debtors through pro bono programs, or they may just happen to have an occasional client who may need bankruptcy relief, or who is a creditor in a case, and the cost of participating electronically in the matter in the bankruptcy court is prohibitive. He urges the Committee to consider amending the proposal to provide in the rule itself for such exceptions.

2. Comment 04-BK-013 Submitted by the Defense Contract Management Agency, an Agency of the Department of Defense. The Agency expressed concern that the mandatory electronic filing rule would constitute a form of consent to be served electronically. The memorandum transmitting the proposed amendment indicates that the rule is not intended to constitute such a form of consent, and that the courts with electronic filing have uniformly allowed entities to "opt out" of the

electronic service system. The Agency suggests that this uniform practice be codified in the rule rather than left unsaid on the assumption that current practices will continue.

3. Comment 04-BK-016 Submitted by the American Bar Association. The ABA has adopted a policy standard which it suggests the Committee should consider in proposing amendments to Rule 5005(a)(2). Specifically, Standard 1.65(c)(ii) provides that a mandatory electronic filing rule must either be at no cost or must include a provision for waiver of such fees as appropriate, and it must include exceptions to assure equal access to the courts for those who are disabled or otherwise face barriers to entry into the court system. The policy also requires adequate advance notice of the implementation of mandatory electronic filing programs and that the courts provide adequate training for use of these processes. The ABA asks that these standards be imported into the rule to ensure as complete access to the courts as possible.

4. Comment 04-BK0-020 Submitted by Mr. Eliot S. Richardson. Mr. Richardson indicates that he has had experience as a pro se litigant, and he suggests that the rule provide for full access to the court records both at the courthouse and remotely, as well as providing filing assistance for pro se parties. He also asserts that any file standards adopted to implement mandatory electronic filing should be limited to non-proprietary files such as PDF and RTF.

5. Comment 04-BK-025 Submitted by the National Association of Consumer Bankruptcy Attorneys. NACBA recognizes the many advantages to electronic filing, and it notes that since many of its members are regular users of electronic filing systems it is somewhat against their self-interest to oppose the proposed amendment. Nonetheless, they assert that the rule should be revised to protect access to the courts for attorneys who may handle only a few cases a year, perhaps as a part of a volunteer lawyer program, as well as legal services attorneys with limited resources. They also propose that the adoption of the amendment be deferred until exceptions to its reach are set out in the rule itself.

6. Comment 04-BK-036 Submitted by the Access to Justice Technology Bill of Rights Committee of the Washington State Access to Justice Board. The Committee offered a lengthy comment on the proposed amendment to Rule 5005(a)(2). The group has engaged in a multi-year study of these issues that led to the promulgation by the Washington State Supreme Court of an Order adopting the Committee's Access to Justice Technology Principles. The comments, authored by Former Superior Court Judge Donald J. Horowitz as chair of the Committee, note that the courts

need to act efficiently and economically. Nevertheless, the courts are not a business, and access to the courts is a more important principle than judicial economy or efficiency. He also lists groups that would be particularly disadvantaged by the proposed amendments. In addition to the pro se filers identified by other comments, this comment lists the incarcerated, the elderly, the disabled, persons who don't know how to use the technology, persons in rural areas, and persons who cannot gain access to the technology, wherever they may reside. He notes especially that lawyers in rural areas may have the hardware to file electronically, but that there may be issues of broadband capacity to handle the amount of data that may need to be filed electronically. The comment asserts that the rule should include specific exclusions for appropriate circumstances, and it offers the Washington State Rule GR 30 as an example. That rule, however, specifically provides that electronic filing is purely permissive. Any person may file documents in hard copy, and the filing must be accepted.

7. Comment 04-BK-037 Submitted by HALT, An Organization of Americans for Legal Reform. This organization represents the interests of consumers of legal services and seeks to make the civil justice system more accessible and accountable. It expressed concern that the rule, as proposed, will limit access to the courts by pro se litigants, a group that the organization notes is more significant in bankruptcy than in general civil litigation. They suggest that the material in the Committee Note to the Rule should be moved into the text of the rule and suggest adding the following sentence to the end of subdivision (a)(2) of Rule5005:

> Courts requiring electronic filing must make exceptions for parties such as *pro se* litigants who cannot easily file by electronic means, allowing such parties to file manually upon showing of good cause.

8. Comment 04-BK-038 Submitted by the Self Help Committee of the Northwest Women's Law Center. This Comment also asserts that the rule should not apply to pro se litigants. The Center assists 3,000 to 5,000 telephone callers annually by providing information and directing them to resources, including attorneys. In their experience, approximately 25% of the callers do not or cannot hire an attorney, so they are aware of the need for access to the courts by pro se parties. They have surveyed their callers and their data indicates that at least 65% of their survey participants prefer hard copies of documents rather than email or other electronic versions of the materials. They also suggest increasing technical assistance at the courts.

9. Comment 04-BK-039 Submitted by The State Bar of California Committee on Federal Courts. This Committee of the State Bar generally favors the proposed amendments to Civil Rule 5, Appellate Rule 25, and Bankruptcy Rule 5005(a)(2). The Committee recognizes the advantages of electronic filing and concludes that the references in the Committee Notes that courts should be sensitive to the needs of those who may not be able to access the court and that local experience should be used to determine the extent and nature of exceptions to the requirement that documents be filed electronically is sufficient. The Committee also agrees with the statement contained in the transmittal memorandum for the amendments that the filing of a document electronically does not constitute agreement to be served electronically. Therefore, this Committee supports the proposal and suggests no changes.

10. Comment 04-BK-040 Submitted by The State Bar of California Standing Committee on the Delivery of Legal Services. The Committee supports the proposal but states that there should be exceptions made for pro se filers and attorneys who lack the technological resources to file papers electronically. They note in particular that legal aid offices and some pro bono attorneys may not have the technological capacity to file documents electronically. They also suggest that the courts ensure that sufficient technical support personnel are available to help persons unfamiliar with the electronic filing process.

11. Comment 04-BK-041 Submitted by Mr. Richard Zorza. Mr. Zorza, an attorney in Washington, D.C., noted that he "works extensively with many groups dealing with issues facing the unrepresented" although his comments are submitted individually. Mr. Zorza notes that the courts have thus far taken a practical approach to ensuring access to the courts for the unrepresented, but he suggests that it is inadvisable to rely on this experience as opposed to including an appropriate provision in the rule itself. He further argues that leaving the crafting of exceptions to the local courts may lead to further inconsistencies, and that attempts to codify specific exceptions will face a wide range of pitfalls. Instead, Mr. Zorza proposes that the rule be amended to limit its application to parties represented by counsel. Thus, his comment is consistent with a number of others that urged the Committee to include within the rule a specific exception for pro se parties.

Changes Made After Publication: The published version of the Rule did not include the sentence set out on lines 7-10 above. The Advisory Committee concluded, based on the written comments received and additional Advisory Committee consideration, that the text of the rule should include a statement regarding the need for courts to protect access to the courts for those whose status might

not allow for electronic participation in cases. The published version had relegated this notion to the Committee Note, but further deliberations led to the conclusion that this matter is too important to leave to the Committee Note and instead should be included in the text of the rule.

Rule 5005. Filing and Transmittal of Papers

* * * * *

(c) ERROR IN FILING OR TRANSMITTAL. A paper intended to be filed with the clerk but erroneously delivered to the United States trustee, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. A paper intended to be transmitted to the United States trustee but erroneously delivered to the clerk, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the United States trustee. In the

interest of justice, the court may order that a paper erroneously delivered shall be deemed filed with the clerk or transmitted to the United States trustee as of the date of its original delivery.

COMMITTEE NOTE

The rule is amended to include the clerk of the bankruptcy appellate panel among the list of persons required to transmit to the proper person erroneously filed or transmitted papers. The amendment is necessary because the bankruptcy appellate panels were not in existence at the time of the original promulgation of the rule. The amendment also inserts the district judge on the list of persons required to transmit papers intended for the United States trustee but erroneously sent to another person. The district judge is included in the list of persons who must transmit papers to the clerk of the bankruptcy court in the first part of the rule, and there is no reason to exclude the district judge from the list of persons who must transmit erroneously filed papers to the United States trustee.

Public Comment on Proposed Amendments to Rule 5005(c):

1. Comment 04-BK-039 Submitted by the State Bar of California Committee on Federal Courts.

The Committee supports the amendment without qualification.

Changes Made After Publication: No changes since publication.

Rule 7004. Process; Service of Summons; Complaint

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(b) SERVICE BY FIRST CLASS MAIL.

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(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 statement of financial affairs~~ or to such other address as the debtor may designate in a filed writing ~~and, if the debtor is represented by an attorney, to the attorney at the attorney's post-office address~~.

* * * * *

(g) ~~[abrogated]~~ SERVICE ON DEBTOR'S ATTORNEY. If the 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(b) F. R. Civ. P.

18 * * * * *

COMMITTEE NOTE

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.

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.

The rule also 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.

Public Comment on Proposed Amendments to Rule 7004:

1. Comment 04-BK-039 Submitted by the State Bar of California Committee on Federal

Courts. The Committee supports the amendment without qualification.

Changes Made After Publication: The Committee Note was amended to add the final 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.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 3001. Proof of Claim

* * * * *

(c) CLAIM BASED ON A WRITING. When a claim, or an interest in property of the debtor securing the claim, is based on a writing, ~~the original or a duplicate~~ 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 proof of claim. If the writing exceeds 25 pages, the claimant shall instead file a copy of relevant excerpts of the writing and a summary of the writing which together shall not exceed a total of 25 pages. If the claimant has not filed a copy of the complete writing, on request of a party in interest, the claimant shall promptly serve on that party a copy of the complete writing.

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

(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. If the evidence of perfection is a writing, the claimant shall file a copy of the writing with the proof of claim. If the writing exceeds five pages, the claimant shall instead file a copy of relevant excerpts of the writing and a summary of the evidence of perfection, which together shall not exceed a total of five pages. If the claimant has not filed a copy of the complete writing, on request of a party in interest, the claimant shall promptly serve on that party a copy of the complete writing.

* * * * *

COMMITTEE NOTE

Subdivisions (c) and (d) of the rule are amended to provide that claimants must file duplicates of writings upon which a claim is based or which evidence perfection of any claimed security interest. The rule previously authorized the claimant to file either the original writing or a duplicate thereof. If the writings that support the claim are 25 pages or less, the claimant must attach a copy of the writings

to the proof of claim, whether or not the claimant provides a summary of the writings. The attached writings and summary together must not exceed 25 pages. Similarly, if the writings that evidence perfection of a security interest do not exceed five pages, the claimant must file a copy of those writings with the proof of claim. The claimant also may attach a summary of the writings evidencing perfection, but the total of the summary and the writings evidencing perfection of a security interest must not exceed five pages.

Subdivisions (c) and (d) are amended to establish limits on the length of documents being attached to a proof of claim. Some documents can be extremely lengthy and may pose particular problems, especially when they are filed electronically. Voluminous documents can cause undue delays both in the filing of the proof of claim as well as in searches of the court's record. Shortened versions of the writings should prevent these problems. Consequently, the rule directs the claimant to file a summary of the writing upon which the claim is based along with copies of the relevant portions of the writing. For example, if a writing must be signed by the debtor to be enforceable, the relevant excerpts likely would include the debtor's signature. The claimant makes the initial determination of relevancy, but to the extent that the attachment does not include relevant excerpts, the evidentiary effect of the proof of claim under subdivision (f) would be limited.

Under subdivision (c), writings on which the claim is based may not exceed 25 pages in length, and if they do, the claimant must instead attach a duplicate of relevant excerpts of the writings and a summary of the complete writings. The summary and the relevant excerpts also may not exceed 25 pages in the aggregate. Similarly, under subdivision (d), any attachment to the proof of claim to provide evidence of perfection of a security interest may not exceed five pages in length. If the writings exceed five pages, the claimant must

instead file a summary of the writings and a duplicate of relevant excerpts. The summary and relevant excerpts of evidence of perfection may not exceed five pages in the aggregate.

Under both subdivisions (c) and (d), if the claimant files a summary rather than a duplicate of the complete writing, the claimant must serve a copy of the complete writing upon any party in interest that requests a copy.

Rule 3007. Objections to Claims

(a) OBJECTIONS TO CLAIMS. An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing. ~~If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.~~

(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 an objection

to the allowance of a claim may be included 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, for one or more of the following reasons:

(1) they duplicate other claims;

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

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

(4) they have been transferred in accordance with Rule 3001(e);

(5) they were not timely filed;

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

(7) 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;

(8) they are interests, rather than claims; and

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

(e) REQUIREMENTS FOR OMNIBUS OBJECTION. An omnibus objection under subdivision (d) shall:

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

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

(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 of the omnibus objection 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.

COMMITTEE NOTE

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 a 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 significant opportunity for 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.

Use of omnibus objections does not preclude the objecting party from raising other objections to claims listed on an omnibus objection. Section 502(j) of the Code authorizes reconsideration of claims, so this rule likewise recognizes the splitting of objections to claims. See Restatement (Second) of Judgments § 26 (1982). Consequently, a claim included in an omnibus objection based on one or more grounds set out in subdivision (d) could be included in another omnibus objection based on a different ground. The claim might also be subject to an objection on any other ground.

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.

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

* * * * *

(b) USE OF CASH COLLATERAL.

(1) Motion; Service.

(A) *Motion.* A motion for ~~authorization~~ authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order ~~served on any entity which has an interest in the cash collateral, 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~~.

(B) *Contents.* The motion shall include an introductory statement, not to exceed three pages, summarizing all material provisions of the motion, including:

(1) the name of each entity with an interest in the cash collateral;

(2) the purposes for the use of the cash collateral,

(3) the terms, including duration, of the use of the cash collateral, and

(4) 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 any entity with an interest in the cash collateral, 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 any other entity that 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 ~~served on any entity which has an interest in the cash collateral, 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. The motion shall be accompanied by a copy of the agreement.~~

(B) *Contents*. The motion shall include an introductory statement, not to exceed three pages, summarizing all material provisions of the proposed credit agreement, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or proposed order includes any of the following provisions, the motion shall describe the nature and extent of each provision, explain the reasons for each provision, and identify the specific location of the provision in the proposed form of order, agreement, or other document:

(1) the granting of priority or a lien on property of the estate under § 364(c) or (d);

(2) the providing of adequate protection or priority with respect to 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, or the use of property of the estate or credit obtained under section 364 to make cash payments on account of the claim;

(3) a determination with respect to the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim;

(4) a waiver or modification of the provisions of the Code or applicable rules relating to the automatic stay;

(5) a waiver or modification of any entity's authority to file a plan, to seek an extension of time in which the debtor has the exclusive right to file a plan, or the right to request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364;

(6) 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;

(7) 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;

(8) indemnification of any entity;

(9) a release, waiver, or limitation of any right under § 506(c); or

(10) the granting of a lien on any claim or cause of action arising under § 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).

(C) *Application of Rule 9024.* The court may grant appropriate relief under Rule 9024 if it determines that the introductory statement did not adequately disclose a material element of the agreement.

(D) *Service.* The motion shall be served on 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 on such other entities as the court may direct.

* * * * *

(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 an agreement (~~A~~1) to provide adequate protection, (~~B~~2) to prohibit or condition the use, sale, or lease of property, (~~C~~3) to modify or

terminate the stay provided for in § 362, (~~D~~4) to use cash collateral, or (~~E~~5) 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 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. The motion shall be~~ accompanied by a copy of the agreement and a proposed form of order.

(B) *Contents.* The motion shall include an introductory statement, not to exceed three pages, summarizing all material provisions of the agreement. The motion also shall state whether the relief requested includes

any of the provisions listed in subdivision (c)(1)(B) and, if so, shall describe the nature and extent of each provision, explain the reasons for each provision, and identify the specific location of the provision in the proposed form of order, agreement, or other document.

(C) *Application of Rule 9024.* The court may grant appropriate relief under Rule 9024 if it determines that the introductory statement did not adequately disclose a material element of the agreement.

(D) *Service.* The motion shall be served on 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 on such other entities as the court may direct.

* * * * *

COMMITTEE NOTE

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 include a summary, not to exceed three pages, which will assist the court and interested parties in understanding the nature of the relief requested. In addition to the summary, 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. These provisions are frequently included in agreements of these types, and the rule is intended to enhance the ability of the court and interested parties to find and evaluate those provisions.

The rule limits the introductory summary to three pages. 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. The court may grant relief under Rule 9024 if it determines that a material element of the requested financing, or agreement regarding the stay or cash collateral usage, was not adequately disclosed in the introductory statement.

Other amendments are stylistic.

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 Assumptions, Assignments, and Rejections of Executory Contracts

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding the following:

(a) an application under Rule 2014;

(b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; and

(c) a motion to assume, assign, or reject an executory contract or unexpired lease in accordance with § 365.

COMMITTEE NOTE

There can be a flurry of activity during the first days of a bankruptcy case. This activity frequently takes place prior to the formation of a creditors' committee, and it also can include substantial amounts of materials for the court and parties in interest

to review and evaluate. This rule is intended to alleviate some of the time pressures present at the start of a case so that full and close consideration can be given to matters that may have a fundamental impact on the case.

The rule provides that the court cannot grant relief on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate other than such a motion under Rule 4001, and motions to assume, assign, or reject executory contracts and unexpired leases for the first 20 days of the case, unless it is necessary to avoid immediate and irreparable harm. This standard is taken from Rule 4001(b)(2) and (c)(2), and decisions under those provisions should provide guidance for the application of this provision.

This rule does not govern motions and applications made more than 20 days after the filing of the petition.

Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease

* * * * *

(e) LIMITATIONS. The trustee shall not seek authority to assume or assign multiple executory contracts or unexpired leases in one motion unless all executory contracts or unexpired leases to be assumed or assigned are between the same parties or are to be assigned to the same assignee, or the

court otherwise authorizes the motion to be filed. Subject to subdivision (f), the trustee may join requests for authority to reject multiple executory contracts or unexpired leases in one motion.

(f) OMNIBUS MOTIONS. A motion to reject or, if permitted under subdivision (e), a motion to assume or assign multiple executory contracts or unexpired leases that are not between the same parties shall:

(1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;

(2) list parties alphabetically and identify the corresponding contract or lease;

(3) specify the terms, including the curing of defaults, for each requested assumption or assignment;

(4) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;

(5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and

(6) be limited to no more than 100 executory contacts or unexpired leases.

(g) FINALITY OF DETERMINATION. The finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion.

COMMITTEE NOTE

The rule is amended to authorize the use of omnibus motions to reject multiple executory contracts and unexpired leases. In some cases there may be numerous executory contracts and unexpired leases, and this rule permits the combining of up to one hundred of these contracts and leases in a single motion to initiate the contested matter.

The rule also is amended to authorize the use of a single motion to assume or assign executory contracts and unexpired leases (i) when such contracts and leases are with a single nondebtor party, (ii) when such contracts and leases are being assigned to the same assignee, or (iii) the court authorizes the filing of a joint motion to assume or to assume and assign executory contracts and unexpired leases under other circumstances that are not specifically recognized in the rule.

An omnibus motion to assume, assign, or reject multiple executory contracts and unexpired leases must comply with the procedural requirements set forth in subdivision (f) of the rule, unless the court orders otherwise. These requirements are intended to ensure that the nondebtor parties to the contracts and leases receive effective notice of the motion. Among those requirements is the requirement in subdivision (f)(5) that these motions be consecutively numbered (*e.g.*, Debtor in Possession's First Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, Debtor in Possession's Second Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, etc.). There may be a need for several of these motions in a particular case. Thus, consecutive numbering of each motion is essential to keep track of these motions on the court's docket. Numbering the motions consecutively should avoid confusion that might otherwise result from similar or identically titled motions.

Subdivision (g) of the rule provides that the finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other contracts or leases included in the omnibus motion to obtain appellate review of the order. The rule permits the listing of multiple contracts or leases for convenience,

and that convenience should not impede timely review of the court's decision with respect to each contract or lease.

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.

COMMITTEE NOTE

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 all contested matters and other proceedings within the bankruptcy case.

Rule 9037. Privacy Protection For Filings Made with the Court

(a) LIMITS ON INFORMATION DISCLOSED IN A FILING. Unless the court orders otherwise, an electronic or paper filing made with the court that includes a social security number or tax identification number; a name of a person, other than the debtor, known to be and identified as a minor;

a person's birth date; or a financial account number may include only

(1) the last four digits of the social security number and tax identification number;

(2) the minor's initials;

(3) the year of birth; and

(4) the last four digits of the financial account number.

(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement of subdivision (a) does not apply to the following:

(1) the record of an administrative or agency proceeding unless filed with a proof of claim;

(2) the record of a court or tribunal whose decision is being reviewed, if that record was not subject to subdivision (a) when originally filed;

(3) filings covered by subdivision (c) of this rule; and

(4) filings that are subject to § 110 of the Code.

(c) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) PROTECTIVE ORDERS. If necessary to protect private or sensitive information that is not otherwise protected by subdivision (a), a court may by order in a case under the Code

(1) require redaction of additional information, or

(2) limit or prohibit remote electronic access by a non-party to a document filed with the court.

(e) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. A party making a redacted filing under subdivision (a) may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) OPTION FOR FILING A REFERENCE LIST. A filing that contains information redacted under subdivision (a) may

be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item of redacted information listed. The reference list must be filed under seal and may be amended as of right. Any references in the case to an identifier in the reference list will be construed to refer to the corresponding item of information.

(g) WAIVER OF PROTECTION OF IDENTIFIERS. A party waives the protection of subdivision (a) as to the party's own information to the extent that such information is filed not under seal and without redaction.

COMMITTEE NOTE

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form, but the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in

the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. See http://www.privacy.uscourts.gov/Policy.htm The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain "personal data identifiers" are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement — such as driver's license numbers and alien registration numbers — in a particular case. In such cases, the party may seek protection under subdivision (c) or (d). Moreover, the rule does not affect the protection available under other rules, such as Rules 16 and 26(c) of the Federal Rules of Civil Procedure, or under other sources of protective authority.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

The inclusion of a debtor's full social security number on the notice of the § 341 meeting of creditors, however, is an example of full information that is made available to creditors. Of course, that information is not filed with the court, see Rule 1007(f) (the debtor "submits" this information), and the copy of the notice that is filed with the court does not include the full social security number. Thus, since the full social security number is not filed with the court, it is not available to a person searching that record.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the parties.

Subdivision (d) recognizes the court's inherent authority to issue a protective order to prevent remote access to private or sensitive information and to require redaction of material in addition to that which would be redacted under subdivision (a) of the rule. These orders may be issued whenever necessary either by the court on its own motion, or on motion of a party in interest.

Subdivision (e) allows a party who makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. Subdivision (f) allows parties to file a reference list of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004.

In accordance with the E-Government Act, subdivision (f) of the rule refers to "redacted" information. The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (g) allows a party to waive the protections of the rule as to its own personal information by filing it in unredacted form. A party may wish to waive the protection if it determines that the costs of redaction outweigh the benefits to privacy. As to financial account numbers, the instructions to Schedules E and F of Official Form 6 note that the debtor may elect to include the complete account number on those schedules rather than limit the number to the final four digits. Including the complete number would operate as a waiver by the debtor under subdivision (g) as to the full information that the debtor set out on those schedules. The waiver operates only to the extent of the information that the party filed without redaction. If a party files an unredacted identifier by mistake, it may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 9037 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with the rule if and when they are filed as part of an appeal or for other reasons.