

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.

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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.

* * * * *

- (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.

*The advisory committee withdrew the proposed amendment to Rule 4002 for further consideration in light of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. Law No. 109-8).

- (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.

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ATTACHMENTS

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

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

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

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1
2 (c) STATEMENT OF SOCIAL SECURITY NUMBER.

3 If a debtor becomes aware that the statement of social
4 security number submitted under Rule 1007(f) is incorrect,
5 the debtor shall promptly submit an amended verified
6 statement setting forth the correct social security number.

7 The debtor shall give notice of the amendment to all of the
8 entities required to be included on the list filed under Rule
9 1007(a)(1) or (a)(2).

10 (d) TRANSMISSION TO UNITED STATES TRUSTEE.

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

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

COMMITTEE NOTE

Subdivision (c). 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.

Subdivision (d). 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.

Changes Made After Publication: No changes since publication.

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Rule 5005. Filing and Transmittal of Papers

1 (a) FILING.

2 * * * * *

3 (2) *Filing by Electronic Means.* A court may by local rule permit
4 or require documents to be filed, signed, or verified by electronic
5 means that are consistent with technical standards, if any, that the
6 Judicial Conference of the United States establishes. A local rule
7 may require filing by electronic means only if reasonable exceptions
8 are allowed. A document filed by electronic means in compliance
9 with a local rule constitutes a written paper for the purpose of
10 applying these rules, the Federal Rules of Civil Procedure made
11 applicable by these rules, and § 107 of the Code.

12 * * * * *

13 (c) ERROR IN FILING OR TRANSMITTAL. A paper intended to
14 be filed with the clerk but erroneously delivered to the United States
15 trustee, the trustee, the attorney for the trustee, a bankruptcy judge, a
16 district judge, the clerk of the bankruptcy appellate panel, or the clerk

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17 of the district court shall, after the date of its receipt has been noted
18 thereon, be transmitted forthwith to the clerk of the bankruptcy court.
19 A paper intended to be transmitted to the United States trustee but
20 erroneously delivered to the clerk, the trustee, the attorney for the
21 trustee, a bankruptcy judge, a district judge, the clerk of the
22 bankruptcy appellate panel, or the clerk of the district court shall,
23 after the date of its receipt has been noted thereon, be transmitted
24 forthwith to the United States trustee. In the interest of justice, the
25 court may order that a paper erroneously delivered shall be deemed
26 filed with the clerk or transmitted to the United States trustee as of the
27 date of its original delivery.

COMMITTEE NOTE

Subdivision (a). 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 exceptions 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).

Subdivision (c). 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.

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.

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Rule 7004. Process; Service of Summons, Complaint

1 * * * * *

2 (b) SERVICE BY FIRST CLASS MAIL.

3 * * * * *

4 (9) Upon the debtor, after a petition has been filed by or
5 served upon the debtor and until the case is dismissed or
6 closed, by mailing a copy of the summons and complaint to
7 the debtor at the address shown in the petition ~~or statement of~~
8 ~~affairs~~ or to such other address as the debtor may designate in
9 a filed writing and, if the debtor is represented by an attorney,
10 ~~to the attorney at the attorney's post-office address.~~

11 * * * * *

12 (g) ~~[abrogated]~~ SERVICE ON DEBTOR'S ATTORNEY.

13 If the debtor is represented by an attorney, whenever service
14 is made upon the debtor under this Rule, service shall also be
15 made upon the debtor's attorney by any means authorized
16 under Rule 5(b) F. R. Civ. P.

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.

Subdivision (b)(9). The rule is amended to delete the reference in subdivision (b)(9) to the debtor's address as set forth in the statement of financial affairs. In 1991, the Official Form of the statement of financial affairs was revised and no longer includes a question regarding the debtor's current residence. Since that time, Official Form 1, the petition, has required the debtor to list both the debtor's residence and mailing address. Therefore, the subdivision is amended to delete the statement of financial affairs as a document that might contain an address at which the debtor can be served.

Subdivision (g). The rule is amended to require service on the debtor's attorney whenever the debtor is served with a summons and complaint. The amendment makes this change by deleting that portion of Rule 7004(b)(9) that requires service on the debtor's attorney when the debtor is served by mail, and relocates the obligation to serve the debtor's attorney into new subdivision (g). Service on the debtor's attorney is not limited to mail service, but may be accomplished by any means permitted under Rule 5(b) F. R. Civ. P.

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

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