

**TO: Honorable Anthony J. Scirica, Chair
Standing Committee on Rules of Practice
and Procedure**

**FROM: Honorable A. Thomas Small, Chair
Advisory Committee on Bankruptcy Rules**

DATE: May 10, 2002

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

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 21-22, 2002, in Tucson, Arizona. The Advisory Committee considered public comments regarding proposed amendments to the Bankruptcy Rules and Official Forms that were published in August 2001.

The proposed amendments published in August 2001 include revisions to four Bankruptcy Rules (Bankruptcy Rules 1007, 2003, 2009, and 2016), and new Rule 7007.1. There were also amendments proposed to Official Forms 1, 5, and 17. The Advisory Committee received only five comments on the proposed amendments and additions to the Rules and Official Forms. Most of the comments were addressed to the amendments to Rule 1007 and the addition of

Rule 7007.1. One person commented on the proposed amendment to Rule 2016. Since no person who submitted a written comment requested to appear at the public hearing scheduled for January 4, 2002, the hearing was canceled.

The Advisory Committee considered the written comments on the proposals and approved each of the proposals and will present them to the Standing Committee at its June 2002 meeting for final approval and transmission to the Judicial Conference. The amendments and additions to the Bankruptcy Rules are set out in Part II A of this Report. The amendments to the Official Forms are set out behind a separate tab in the Agenda Book.

The Advisory Committee also considered proposed amendments to Bankruptcy Rule 1005 and eleven Official Forms to implement a Judicial Conference policy concerning a restriction on the publication of social security numbers. These amendments were published for comment in January 2002, and since the comment period for these amendments did not expire until April 22, 2002, there were no comments to consider at the time of the Committee's meeting. The Committee, however, directed the Subcommittee on Privacy and Public Access to invite persons to participate in a focus group meeting to discuss the issues raised by the proposed amendments. The Subcommittee conducted the focus group meeting in Washington, D.C., on April 12, 2002, the date originally scheduled for the public hearing on the proposals. The Committee did not receive any timely requests to appear at the scheduled public hearing. The Subcommittee approved amendments to Rules 1005, 1007, and 2002, and Official Forms 1, 3, 5, 6, 7, 8, 9, 10, 16A, 16C, and 19, and will present them to the Standing Committee at its June 2002 meeting for final approval and transmission to the Judicial Conference. The amendments to the Bankruptcy Rules are set out in Part II B of this Report. The amendments to the Official Forms are set out behind a

separate tab in the Agenda Book.

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II. Action Items

A. Proposed Amendments to Bankruptcy Rules 1007, 2003, 2009, and 2016, Proposed New Rule 7007.1, and Official Forms 1, 5, and 17 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference.

1. *Public Comment.*

The preliminary draft of the proposed amendments and an addition to the Federal Rules of Bankruptcy Procedure and amendments to the Official Forms were published for comment in August 2001, and a public hearing on the preliminary draft was scheduled for January 4, 2002. There were no requests to appear at the hearing.

There were five comments on the proposals. The comment submitted by the Standing Committee on Rules of Practice and Procedure for the United States District Court for the Western District of Michigan stated that it supports all of the proposed amendments to the Bankruptcy Rules. There were no comments on the proposed amendments to the Official Forms. The remaining comments are summarized on a rule-by-rule basis following the text of each rule set out below. The Advisory Committee reviewed these comments and approved the amendments and addition to the rules and forms as published. The Advisory Committee recommends that the amendments to the Official Forms be approved

effective December 1, 2002.

2. *Synopsis of Proposed Amendments and Addition:*

- (a) Rule 1007 is amended to add an obligation for corporate debtors to include information regarding their owners that also are corporations. The disclosure provides to the court, at the beginning of the case, some of the information necessary to make judicial disqualification decisions.
- (b) Rule 2003 is amended to reflect the enactment of a new subchapter V of chapter 7 of the Bankruptcy Code that makes multilateral clearing organizations eligible for bankruptcy relief.
- (c) Rule 2009 is amended to reflect the enactment of a new subchapter V of chapter 7 of the Bankruptcy Code that makes multilateral clearing organizations eligible for bankruptcy relief.
- (d) Rule 2016 is amended to implement amendments made to 11 U.S.C. § 110(h)(1).
- (e) Rule 7007.1 is added to require parties in adversary proceedings to disclose corporate entities that own 10% or more of the stock of the party to provide the court with some of the information necessary to make judicial disqualification decisions.

- (f) Official Form 1 is the form of a voluntary petition, and it is amended to add a checkbox for designating a clearing bank case filed under subchapter V of chapter 7 of the Bankruptcy Code.
- (g) Official Form 5 is the form of an involuntary petition, and it is amended to give notice to child support creditors and their representatives that no filing fee is required if the petitioner files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 (Oct. 22, 1994).
- (h) Official Form 17 is the form of a Notice of Appeal, and it is amended to give notice to child support creditors and their representatives that no filing fee is required if the appellant files the statement specified by § 304 (g) of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 (Oct. 22, 1994).

COMMITTEE NOTE

This rule is amended to require the debtor to file a corporate ownership statement setting out the information described in Rule 7007.1. Requiring debtors to file the statement provides the court with an opportunity to make judicial disqualification determinations at the outset of the case. This could reduce problems later in the case by preventing the initial assignment of the case to a judge who holds a financial interest in a parent company of the debtor or some other entity that holds a significant ownership interest in the debtor. Moreover, by including the disclosure statement filing requirement at the commencement of the case, the debtor does not have to make the same disclosure filing each time it is involved in an adversary proceeding throughout the case. The debtor also must file supplemental statements as changes in ownership might arise.

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

Rule 2003. Meeting of Creditors or Equity Security Holders

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2 (b) ORDER OF MEETING.

3 (1) *Meeting of Creditors.* The United States trustee

4 shall preside at the meeting of creditors. The business of

5 the meeting shall include the examination of the debtor

6 under oath and, in a chapter 7 liquidation case, may
7 include the election ~~of a trustee or~~ of a creditors'
8 committee and, if the case is not under subchapter V of
9 chapter 7, the election of a trustee. The presiding officer
10 shall have the authority to administer oaths.

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COMMITTEE NOTE

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

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

Rule 2009. Trustees for Estates When Joint Administration Ordered

1 (a) ELECTION OF SINGLE TRUSTEE FOR
2 ESTATES BEING JOINTLY ADMINISTERED. If the
3 court orders a joint administration of two or more estates

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE
4 ~~pursuant to~~ under Rule 1015(b), creditors may elect a
5 single trustee for the estates being jointly administered,
6 unless the case is under subchapter V of chapter 7 of the
7 Code.

8 (b) RIGHT OF CREDITORS TO ELECT SEPARATE
9 TRUSTEE. Notwithstanding entry of an order for joint
10 administration ~~pursuant to~~ under Rule 1015(b), the creditors
11 of any debtor may elect a separate trustee for the estate of
12 the debtor as provided in § 702 of the Code, unless the case
13 is under subchapter V of chapter 7.

14 (c) APPOINTMENT OF TRUSTEES FOR ESTATES
15 BEING JOINTLY ADMINISTERED.

16 (1) *Chapter 7 Liquidation Cases.* Except in a case
17 governed by subchapter V of chapter 7, ~~The~~ United
18 States trustee may appoint one or more interim trustees
19 for estates being jointly administered in chapter 7 cases.

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COMMITTEE NOTE

The rule is amended to reflect the enactment of subchapter V of chapter 7 of the Code governing multilateral clearing organization liquidations. Section 782 of the Code provides that the designation of a trustee or alternative trustee for the case is made by the Federal Reserve Board. Therefore, neither the United States trustee nor the creditors can appoint or elect a trustee in these cases.

Other amendments are stylistic.

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

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses

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(c) DISCLOSURE OF COMPENSATION PAID OR

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PROMISED TO BANKRUPTCY PETITION PREPARER.

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Every bankruptcy petition preparer for a debtor shall file a

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declaration under penalty of perjury and transmit the

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declaration to the United States trustee within 10 days after

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the date of the filing of the petition, or at another time as the

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court may direct, as required by § 110(h)(1). The declaration

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE
9 must disclose any fee, and the source of any fee, received from
10 or on behalf of the debtor within 12 months of the filing of the
11 case and all unpaid fees charged to the debtor. The
12 declaration must describe the services performed and
13 documents prepared or caused to be prepared by the
14 bankruptcy petition preparer. A supplemental statement shall
15 be filed within 10 days after any payment or agreement not
16 previously disclosed.

COMMITTEE NOTE

This rule is amended by adding subdivision (c) to implement § 110(h)(1) of the Code.

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

Rule 7007.1. Corporate Ownership Statement

1 (a) REQUIRED DISCLOSURE. Any corporation that is
2 a party to an adversary proceeding, other than the debtor or a
3 governmental unit, shall file two copies of a statement that
4 identifies any corporation, other than a governmental unit, that

5 directly or indirectly owns 10% or more of any class of the
6 corporation's equity interests, or states that there are no
7 entities to report under this subdivision.

8 (b) TIME FOR FILING. A party shall file the statement
9 required under Rule 7007.1(a) with its first pleading in an
10 adversary proceeding. A party shall file a supplemental
11 statement promptly upon any change in circumstances that this
12 rule requires the party to identify or disclose.

COMMITTEE NOTE

This rule is derived from Rule 26.1 of the Federal Rules of Appellate Procedure. The information that parties shall supply will support properly informed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c) of the Code of Conduct for United States Judges. This rule does not cover all of the circumstances that may call for disqualification under the subjective financial interest standard of Canon 3C, and does not deal at all with other circumstances that may call for disqualification. Nevertheless, the required disclosures are calculated to reach the majority of circumstances that are likely to call for disqualification under Canon 3C(1)(c).

The rule directs nongovernmental corporate parties to list those corporations that hold significant ownership interests in them. This includes listing membership interests in limited liability companies and

similar entities that fall under the definition of a corporation in Bankruptcy Code § 101.

Under subdivision (b), parties must file the statement with the first document that they file in any adversary proceeding. The rule also requires parties and other persons to file supplemental statements promptly whenever changed circumstances require disclosure of new or additional information.

The rule does not prohibit the adoption of local rules requiring disclosures beyond those called for in Rule 7007.1.

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

B. Proposed Amendments to Rules 1005, 1007, and 2002, and Official Forms 1, 3, 5, 6, 7, 8, 9, 10, 16A, 16C, and 19 Submitted for Final Approval by the Standing Committee and Adoption by the Judicial Conference.

1. *Public Comment.*

The preliminary draft of proposed amendments to Rule 1005 and eleven Official Forms was published for comment by the bench and bar in January 2002, and a hearing was scheduled for April 12, 2002, in Washington, D.C. We received no timely requests to appear at the public hearing; however, the Subcommittee on Privacy and Public Access

conducted a focus group meeting in Washington on April 12 to consider the views of representatives of private creditors, credit data gatherers, taxing authorities, law enforcement, and

the Federal Trade Commission.

The Advisory Committee received thirty-two written comments on the proposed amendments along with the presentations made at the focus group meeting. The comments were submitted by representatives of creditor interests, taxing authorities, credit data collection services, law enforcement, bankruptcy petition preparers, and the United States trustee, among others. The focus group discussion also included a representative from the Federal Trade Commission who oversees the Commission's work relating to identity theft.

The published amendments included only a proposed amendment to Rule 1005 that would have restricted the debtor's social security number on the caption of the petition to the last four digits of the number. The proposal did not include any mechanism for the collection of the full social security number or any means of access to an electronic court record of the case by the full social security number. After considering the written comments and the discussions held in the focus group meeting, the Subcommittee on Privacy and Public Access recommended the adoption of amendments to Rules 1007 and 2002 that would supplement the amendment to Rule 1005 by requiring the debtor to submit, but not file, a statement of his or her social security number that could be used to permit a search of the court records by persons who already have the debtor's social security number. Collection of the social security number also would permit the clerk to include the full number on the notice to creditors of the § 341

meeting of creditors, thereby allowing for the efficient identification of the debtor by creditors in the case. The Advisory Committee, by mail ballot, accepted the proposal of

the Subcommittee and recommends the approval of the amendments to Rules 1005, 1007, and 2002, and the amendments to Official Forms 1, 3, 5, 6, 7, 8, 9, 10, 16A, 16C, and 19. Again, approval of the Official Forms is recommended as of December 1, 2003.

Summary of the Comments

Comments on the proposal generally were not addressed to the specific language of the proposed amendment to Bankruptcy Rule 1005, or to any specific amendment within the Official Forms. Rather, they were much more general in nature. Therefore, this summary of the comments is made according to the nature of the comments offered rather than by identification of individual comments.

There were four categories of comments on the proposals. The first group of comments were from bankruptcy petition preparers who object to being required to disclose their social security numbers while other participants in the process do not. The second category of comments came from private creditor interests and taxing authorities who asserted a need for the debtor's full social security number. The third category of comments came from the credit reporting industry and likewise urged the use of the full social security number to protect the integrity and accuracy of the credit reporting industry. The final category of comments came from the United States Trustee Program and the Department of Justice. They asserted that collection of the full social security number is necessary to protect the integrity

of the bankruptcy system and to prevent debtors from avoiding prosecution in appropriate cases.

Bankruptcy Petition Preparers

Several bankruptcy petition preparers submitted comments noting their objection to the requirement that their social security numbers be set out on the forms. They noted the potential problem of identity theft and asserted that their social security numbers should be protected to at least the same extent as the debtor's social security number. The Code specifically requires in § 110, however, that bankruptcy petition preparers must include their social security number on the petition and elsewhere. The Ninth Circuit has upheld this requirement in *Ferm v. United States Trustee (In re Crawford)*, 194 F.3d 954 (9th Cir. 1999). Given the statutory directive, it is not within the Committee's authority to adopt a rule to restrict the disclosure of a bankruptcy petition preparer's social security number.

Private Creditors

The second group of comments addressed creditor concerns about the truncation of the social security number. Both private (VISA, Mastercard, and Toyota Motor Credit, among others) and public (tax, child support, employment services) creditors asserted that limiting the disclosure of the social security number would lead to significant difficulties in identifying debtors. They generally noted that current searches are based on the full nine digit social security number and that reconfiguring their systems to accommodate a four digit number would be very expensive and would lead to potential misidentification of debtors. Misidentification could lead to inadvertent violations of the automatic stay as well as the discharge injunction according to these commentators. Misidentification might also lead to incorrect

attribution of a bankruptcy filing to the wrong person thereby affecting that person's credit rating. This concern was expressed by virtually every creditor or creditor representative submitting a comment. These themes were presented as well at the focus group meeting. Mr. Raymond Bell (see comment 02), on behalf of Fleet Credit Card Services, L.P., participated in the focus group meeting and described the matching process employed when a notice of bankruptcy is received. He stated that limiting the social security number to the last four digits would increase costs dramatically because of an increased need for the evaluation of several factors to verify the identity of the debtor as a customer. Representatives of taxing authorities and other public creditors from Arizona, California, Connecticut, Idaho, Massachusetts, New Mexico, New York, Ohio, and Oregon likewise asserted a need for the full social security number. Representatives of the Internal Revenue Service participated in the focus group meeting and noted as well that the Service relies on the full social security number and would be significantly disadvantaged if the number reported to them were reduced to the last four digits.

Credit Reporting Agencies

Representatives of the credit reporting industry submitted the third category of comments. Mr. Stuart Pratt of the Consumer Data Industry Association submitted written comments and participated in the focus group discussion. Mr. Pratt offered information about the number of persons in the United States with identical or nearly identical names who might also have the same last four digits of a social security number. He also argued that timely and accurate reporting of this information is essential not just to specific creditors of the debtor, but to the efficient operation of the credit system generally. A representative of LEXIS/NEXIS made a similar

point as well in the written comments he submitted. In their views, the accuracy of credit reporting would suffer with a truncation of the social security number on a debtor's petition. They noted as well that limiting access would, at the very least, create delays in the reporting of the information.

United States Trustee Program and the Department of Justice

The last category of comments came from the United States trustee program (including an individual employee of the United States trustee program, in her individual capacity and not as a representative of the program) and the Department of Justice. These comments focused on the need for complete and accurate information both to ensure the integrity of the system and to prevent criminal activity by persons who would use false social security numbers. The comment of the United States trustee program noted the efforts recently undertaken to verify the identity of debtors to protect against fraudulent filers. The Department of Justice indicated that it uses personal identifiers from bankruptcy files for a variety of investigative purposes in cases of credit card fraud, bankruptcy fraud, and identity theft. According to the Department, limiting access to this information could hamper the investigation of a wide range of criminal activity. Finally, the Department of the Treasury also objected to the truncation of the social security number (for the reasons stated by other creditors, both public and private), but Treasury also objected to any truncation of the Employer Tax Identification Number. It noted that the EIN does not present the same privacy concerns that the social security number poses, and the EIN is used extensively by the Department and should continue to be disclosed fully by the debtor.

2. *Synopsis of Proposed Amendments:*

- (a) Rule 1005 is amended to require the debtor to list all names used in the six years preceding the filing of the petition, and to include on the caption appropriate numerical identifiers, but using only the last four digits of the social security number.
- (b) Rule 1007 is amended to require the debtor to submit a verified statement of his or her full social security number. The statement is submitted, but it is not filed in the case and does not become a part of the court record. Therefore, the full social security number does not become a part of the electronic case record that would be available to the public either through internet access or by a search of the paper records at the court.
- (c) Rule 2002 is amended to require the clerk to include the debtor's full social security number on the § 341 notice to creditors. The full number should be included only on the notices sent to the creditors and not on the copy of the notice that becomes part of the court record.

Rule 1005. Caption of Petition

1 The caption of a petition commencing a case under the
2 Code shall contain the name of the court, the title of the case,
3 and the docket number. The title of the case shall include the
4 following information about the debtor: the name, employer
5 identification number, last four digits of the social security
6 number, any other federal tax identification number, and
7 ~~employer's tax identification number of the debtor~~ and all
8 other names used ~~by the debtor~~ within six years before filing
9 the petition. If the petition is not filed by the debtor, it shall
10 include all names used by the debtor which are known to the
11 petitioners.

COMMITTEE NOTE

The rule is amended to implement the Judicial Conference policy to limit the disclosure of a party's social security number and similar identifiers. Under the rule, as amended, only the last four digits of the debtor's social security number need be disclosed. Publication of the employer identification number does not present the same identity theft or privacy protection issues. Therefore, the caption must include the full employer identification number.

Debtors must submit with the petition a statement setting out their social security numbers. This enables the clerk to include the full social security number on the notice of the section 341 meeting of creditors, but the statement itself is not submitted in the case or maintained in the case file.

Changes Made After Publication and Comments. The rule was changed only slightly after publication. The rule was changed to make clear that only the debtor's social security number is truncated to the final four digits, but other numerical identifiers must be set out in full. The rule also was amended to include a requirement that a debtor list other federal taxpayer identification numbers that may be in use.

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

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(c) TIME LIMITS. The schedules and statements, other than the statement of intention, shall be filed with the petition in a voluntary case, or if the petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h) of this rule. In an involuntary case, the schedules and statements, other than the statement of intention, shall be filed by the debtor within 15 days of the

10 entry of the order for relief. Schedules and statements filed
11 prior to the conversion of a case to another chapter shall be
12 deemed filed in the converted case unless the court directs
13 otherwise. Any extension of time for the filing of the
14 schedules and statements may be granted only on motion for
15 cause shown and on notice to the United States trustee and to
16 any committee elected under § 705 or appointed under § 1102
17 of the Code, trustee, examiner, or other party as the court may
18 direct. Notice of an extension shall be given to the United
19 States trustee and to any committee, trustee, or other party as
20 the court may direct.

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22 (f) STATEMENT OF SOCIAL SECURITY NUMBER.

23 An individual debtor shall submit a verified statement that sets
24 out the debtor's social security number, or states that the
25 debtor does not have a social security number. In a voluntary
26 case, the debtor shall submit the statement with the petition.

18 FEDERAL RULES OF BANKRUPTCY PROCEDURE

27 In an involuntary case, the debtor shall submit the statement

28 within 15 days after the entry of the order for relief.

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COMMITTEE NOTE

The rule is amended to add a requirement that a debtor submit a statement setting out the debtor's social security number. The addition is necessary because of the corresponding amendment to Rule 1005 which now provides that the caption of the petition includes only the final four digits of the debtor's social security number. The debtor submits the statement, but it is not filed, nor is it included in the case file. The statement provides the information necessary to include on the service copy of the notice required under Rule 2002(a)(1). It will also provide the information to facilitate the ability of creditors to search the court record by a search of a social security number already in the creditor's possession.

Changes Made After Publication and Comments. The rule amendment is made in response to the extensive commentary that urged the Advisory Committee to continue the obligation contained in current Rule 1005 that a debtor must include his or her social security number on the caption of the bankruptcy petition. Rule 1005 is amended to limit that disclosure to the final four digits of the social security number, and Rule 1007 is amended to reinstate the obligation in a manner that will provide more protection of the debtor's privacy while continuing access to the information to those persons with legitimate need for that data. The debtor must disclose the information, but the method of disclosure is by a verified statement that is submitted to the clerk. The statement is not filed in the case and does not become a part of the court record. Therefore,

it enables the clerk to deliver that information to the creditors and the trustee in the case, but it does not become a part of the court record governed by § 107 of the Bankruptcy Code and is not available to the public.

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

1 (a) TWENTY-DAY NOTICES TO PARTIES IN
2 INTEREST. Except as provided in subdivisions (h), (i), and
3 (l) of this rule, the clerk, or some other person as the court
4 may direct, shall give the debtor, the trustee, all creditors and
5 indenture trustees at least 20 days' notice by mail of:

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

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COMMITTEE NOTE

Subdivision (a)(1) of the rule is amended to direct the clerk or other person giving notice of the § 341 or § 1104(b) meeting of creditors to include the debtor's full social security number on the notice. Official Form 9, the form of the notice of the meeting of creditors that will become a part of the court's file in the case, will include only the last four digits of the debtor's social security number. This rule, however, directs the clerk to include the full social security number on the notice that is served on the creditors and other identified parties, unless the court orders otherwise in a particular case. This will enable creditors and other parties in interest who are in possession of the debtor's social security number to verify the debtor's identity and proceed accordingly. The filed Official Form 9, however, will not include the debtor's full social security number. This will prevent the full social security number from becoming a part of the court's file in the case, and the number will not be included in the court's electronic records. Creditors who already have the debtor's social security number will be able to verify the existence of a case under the debtor's social security number, but any person searching the electronic case files without the number will not be able to acquire the debtor's social security number.

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

under the current rules, and the amendment is necessary because of the amendment to Rule 1005 that restricts publication of the social

security number on the caption of the petition to the final four digits of the number.

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