

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 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 27, 2003**

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

**I. Introduction**

The Advisory Committee on Bankruptcy Rules met on April 3-4, 2003, in Longboat Key, Florida. The Advisory Committee considered public comments regarding a proposed amendment to Bankruptcy Rule 9014 that was published in August 2002. The Advisory Committee received only four comments on the proposed amendment to the Rule. 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 also considered technical amendments to Bankruptcy Rules 1011 and 2002(g) as well as a new Official Form for the submission of a debtor's social security number as required by amendments to Bankruptcy Rules 1007 and 2002 that will become effective on December 1, 2003. Finally, the Advisory Committee considered amendments to Bankruptcy Rules 1007, 3004, 3005, 4008, 7004, and 9006.

The Advisory Committee considered the written comments on the proposed amendment to Bankruptcy Rule 9014, and approved the proposal and will present it to the Standing Committee at its June 2003 meeting for final approval and transmission to the Judicial Conference. The amendment to Bankruptcy Rule 9014 is set out in Part II A of this Report.

The amendments to Bankruptcy Rules 1011 and 2002(g) are technical and are submitted to the Standing Committee without prior publication and comment. The amendment to Rule 1011 simply conforms a cross reference in that rule to reflect a recent amendment to another Bankruptcy Rule. The amendment to Rule 2002(g) changes the address for mailing notices to the Internal Revenue Service because of a change in the structure of the Service. A new Official Form 21 is proposed to implement the restrictions on the publication of a debtor's social security number. The amendments to Bankruptcy Rules 1011 and 2002(g) and Official Form 21 are set out in Part II B of this Report.

The Advisory Committee also approved a preliminary draft of proposed amendments to Bankruptcy Rules 1007, 3004, 3005, 4008, 7004, and 9006 and will present those amendments to the Standing Committee at its June 2003 meeting with a request that the proposals be published for comment. The Standing Committee in January 2003 approved for publication an amendment to Rule 4008. The Style Consultant to the Standing Committee and the Style Subcommittee of the Advisory Committee have made stylistic changes to that rule, and this revised version is set out along with the other proposed amendments in Part II C of this Report.

## II Action Items

### A. Proposed Amendments to Bankruptcy Rule 9014 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference.

#### 1. *Public Comment.*

The preliminary draft of the proposed amendment to Bankruptcy Rule 9014 was published for comment in August 2002. A public hearing on the preliminary draft was scheduled for January 24, 2003. There were no requests to appear at the hearing. There were four comments on the proposal, and they are summarized below. The Advisory Committee reviewed these comments and approved the amendment to the rule as published.

#### 2. *Synopsis of Proposed Amendment*

Rule 9014 is amended to limit the applicability of the mandatory disclosure provisions of Rule 26 of the Federal Rules of Civil Procedure made applicable in contested matters in bankruptcy cases by Bankruptcy Rule 7026. Contested matters typically are resolved more quickly than the time that would elapse under the normal application of the mandatory disclosure provisions of Fed. R. Civ. P. 26. Those disclosure requirements continue to apply in adversary proceedings, and the court can order that they apply in a particular contested matter.

3. *Text of Proposed Amendment to Rule 9014*

**Rule 9014. CONTESTED MATTERS**

\*\*\*\*\*

1  
2 (c) APPLICATION OF PART VII RULES. Except as  
3 otherwise provided in this rule, and unless ~~Unless~~ the court directs  
4 otherwise, the following rules shall apply: 7009, 7017, 7021, 7025,  
5 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and  
6 7071. The following subdivisions of Fed. R. Civ. P. 26, as  
7 incorporated by Rule 7026, shall not apply in a contested matter  
8 unless the court directs otherwise: 26(a)(1) (mandatory  
9 disclosure), 26(a)(2) (disclosures regarding expert testimony) and  
10 26(a)(3) (additional pre-trial disclosure), and 26(f) (mandatory  
11 meeting before scheduling conference/discovery plan). An entity  
12 that desires to perpetuate testimony may proceed in the same  
13 manner as provided in Rule 7027 for the taking of a deposition  
14 before an adversary proceeding. The court may at any stage in a  
15 particular matter direct that one or more of the other rules in Part  
16 VII shall apply. The court shall give the parties notice of any order  
17 issued under this paragraph to afford them a reasonable opportunity  
18 to comply with the procedures prescribed by the order.

## COMMITTEE NOTE

The rule is amended to provide that the mandatory disclosure requirements of Fed. R. Civ. P. 26, as incorporated by Rule 7026, do not apply in contested matters. The typically short time between the commencement and resolution of most contested matters makes the mandatory disclosure provisions of Rule 26 ineffective. Nevertheless, the court may by local rule or by order in a particular case provide that these provisions of the rule apply in a contested matter.

### Public Comment on Proposed Amendments to Rule 9014:

1. Gary L. Kepplinger, Deputy General Counsel, United States General Accounting Office, submitted a letter indicating that his office had no comments on the proposal.
2. Thomas J. Yerbich, Court Rules Attorney for the District of Alaska, supports the proposed amendment to Rule 9014 and also suggested that the rule include a specific reference to the court's authority to issue a local rule governing mandatory discovery matters.
3. Professor Anthony Michael Sabino, Associate Professor at St. John's University School of Business, supports the proposed amendment to Rule 9014 and suggested an addition to the Committee Note to reiterate that the court has the power to require the application of all or some of Civil Rule 26 in appropriate circumstances.
4. Kent F. Hofmeister, Esq., President, Federal Bar Association, stated that the Federal Bar Association supports the amendment to Rule 9014.

Changes Made After Publication. No changes since publication.

### *B. Rules and Official Form Amendments Proposed Without Public Comment.*

The Advisory Committee considered technical amendments to Bankruptcy Rules 1011 and 2002(g). The Advisory Committee approved the amendments to the rules and submits that the nature of these amendments is such that there is no need for publication and comment on the proposed amendments. The Advisory Committee recommends that the Standing Committee approve the amendments for submission to the Judicial Conference.

The Advisory Committee also considered a new Official Form 21. This form implements

the amendment to Rule 1007(f) that becomes effective on December 1, 2003, in the absence of Congressional action. The form provides the mechanism for the debtor to submit a social security number to the court so that creditors and other parties in interest can identify the debtor while maintaining the debtor's privacy. The Advisory Committee recommends that the Standing Committee approve the Official Form for submission to the Judicial Conference with an effective date of December 1, 2003.

1. *Synopsis of Proposed Rules Amendments and New Official Form:*

- (a) Rule 1011 is amended to delete a cross reference to Rule 1004(b). The cross reference should be to Rule 1004 because that rule was amended recently such that the rule no longer includes any subdivisions.
- (b) Rule 2002(g) is amended to reflect the restructuring of the Internal Revenue Service. The Service no longer includes a District Director, so the rule is amended to provide that notices should be mailed to the address set out by the Service in the register maintained by the clerk of the Bankruptcy Court.
- (c) Official Form 21 is a new form that a debtor must submit to the court setting out the debtor's social security number. The Form implements the recently approved amendments to Bankruptcy Rule 1007 adopted to further the Judicial Conference's privacy protection policy.

2. *Text of Proposed Amendments to Rules 1011, 2002, and Proposed New Official Form 21:*

**RULE 1011. RESPONSIVE PLEADING OR MOTION IN INVOLUNTARY AND ANCILLARY CASES**

1 (a) WHO MAY CONTEST PETITION. The debtor named in an  
2 involuntary petition or a party in interest to a petition commencing  
3 a case ancillary to a foreign proceeding may contest the petition. In  
4 the case of a petition against a partnership under Rule 1004 (b), a  
5 nonpetitioning general partner, or a person who is alleged to be a  
6 general partner but denies the allegation, may contest the petition.

\* \* \* \* \*

COMMITTEE NOTE

The amendment to Rule 1004 that became effective on December 1, 2002, deleted former subdivision (a) of that rule leaving only the provisions relating to involuntary petitions against partnerships. The rule no longer includes subdivisions. Therefore, this technical amendment changes the reference to Rule 1004(b) to Rule 1004.

**Rule 2002. NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS, UNITED STATES, AND UNITED STATES TRUSTEE**

\* \* \* \* \*

1

2 (j) NOTICES TO THE UNITED STATES. Copies of notices

3 required to be mailed to all creditors shall be mailed (1) in a

4 chapter 11 reorganization case, to the Securities and Exchange

5 Commission at any place the Commission designates, if the

6 Commission has filed either a notice of appearance or a written

7 request to receive notice; (2) in a commodity broker case, to the

8 Commodity Futures Trading Commission at Washington, D.C.; (3)

9 in a chapter 11 case, to the ~~District Director~~ of Internal Revenue

10 Service at its address set out in the register maintained under Rule

11 5003(e) for the district in which the case is pending; (4) if the

12 papers in the case disclose a debt to the United States other than for

13 taxes, to the United States attorney for the district in which the case

14 is pending and to the department, agency, or instrumentality of the

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

18 \* \* \* \* \*

COMMITTEE NOTE

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

The Advisory Committee also approved a new Official Form 21. This Form implements a recent amendment to Bankruptcy Rule 1007(f) which requires a debtor to submit a statement under penalty of perjury setting out the debtor's social security number. This rule amendment becomes effective on December 1, 2003, and the Advisory Committee recommends that the Standing Committee recommend that the Judicial Conference approve the Official Form to be effective on December 1, 2003.

**OFFICIAL FORM NO. 21 IS SET OUT SEPARATELY**

**FORM 21. STATEMENT OF SOCIAL SECURITY NUMBER**

[Caption as in Form 16A.]

STATEMENT OF SOCIAL SECURITY NUMBER(S)

1. Name of Debtor (enter Last, First, Middle): \_\_\_\_\_  
(Check the appropriate box and, if applicable, provide the required information.)

- / Debtor has a Social Security Number and it is: \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
(If more than one, state all.)
- / Debtor does not have a Social Security Number.

2. Name of Joint Debtor (enter Last, First, Middle): \_\_\_\_\_  
(Check the appropriate box and, if applicable, provide the required information.)

- / Joint Debtor has a Social Security Number and it is: \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
(If more than one, state all.)
- / Joint Debtor does not have a Social Security Number.

I declare under penalty of perjury that the foregoing is true and correct.

X \_\_\_\_\_  
Signature of Debtor Date

X \_\_\_\_\_  
Signature of Joint Debtor Date

\*Joint debtors must provide information for both spouses.

Penalty for making a false statement: Fine of up to \$250,000 or up to 5 years imprisonment or both. 18 U.S.C. §§ 152 and 3571.

COMMITTEE NOTE

The form implements Rule 1007(f), which requires a debtor to submit a statement under penalty of perjury setting out the debtor's Social Security number. The form is necessary because Rule 1005 provides that the caption of the petition includes only the final four digits of the debtor's Social Security number. The statement provides the information necessary for the clerk to include the debtor's full Social Security number on the notice of the meeting of creditors, as required under Rule 2002(a)(1). Creditors in a case, along with the trustee and United States trustee or bankruptcy administrator, will receive the full Social Security number on their copy of the notice of the meeting of creditors. The copy of that notice which goes into the court file will show only the last four digits of the number.



C. Preliminary Draft of Proposed Amendments to Rules 1007, 3004, 3005, 4008, 7004, and 9006

1. *Synopsis of Proposed Amendments:*

- (a) Rule 1007 is amended to require the debtor in a voluntary case to submit with the petition a list of entities to which notices will be sent in the case. The listed parties are identified as the entities listed or to be listed on Schedules D through H of the Official Forms.
- (b) Rule 3004 is amended to conform the rule to § 501(c) of the Bankruptcy Code. The amendment clarifies that the debtor or trustee may not file a proof of claim until after the time for filing a proof by a particular creditor has expired.
- (c) Rule 3005 is amended to delete any reference to a creditor filing a proof of claim that supersedes a claim filed on behalf of the creditor by a codebtor. The amendment thus conforms the rule to § 501(b) of the Bankruptcy Code.
- (d) Rule 4008 is amended to establish a deadline for filing a reaffirmation agreement with the court. The amendment deletes the former version of the rule that governed the timing of the reaffirmation agreement and discharge hearing. These restrictions on the court's docket are unduly burdensome and the amendment with the discretion to set and hold these hearings at appropriate times in the circumstances presented in the case.
- (e) Rule 7004 is amended to authorize the clerk specifically to sign, seal, and issue a summons electronically. The amendment does not address the service requirements for a summons which are set out in other provisions of Rule 7004.
- (f) Rule 9006 is amended to clarify that the three day period is added to the end of the time period for taking action when service is accomplished through certain specified means. This amendment is intended to conform as closely as possible to the amendment being proposed by the Advisory Committee on Civil Rules.

2. *Text of Proposed Amendments to Rules 1007, 3004, 2005, 4008, 7004, and 9006:*

**RULE 1007. LISTS, SCHEDULES AND STATEMENTS,  
TIME LIMITS**

1 (a) LIST OF CREDITORS AND EQUITY SECURITY  
2 HOLDERS

3 (a) List of Creditors and Equity Security Holders

4 (1) In a voluntary case, ~~the debtor shall file with the~~  
5 ~~petition a list containing the name and address of each creditor~~  
6 ~~unless the petition is accompanied by a schedule of liabilities~~ the  
7 debtor shall file with the petition a list containing the name and  
8 address of each person included or to be included on Schedules D,  
9 E, F, G, and H as prescribed by the Official Forms.

10 (2) In an involuntary case, the debtor shall file  
11 within 15 days after entry of the order for relief, a list containing  
12 the name and address of each creditor ~~unless a schedule of~~  
13 ~~liabilities has been filed~~ person included or to be included on  
14 Schedules D, E, F, G, and H as prescribed by the Official Forms.

15 \* \* \* \* \*

16 (c) In a voluntary case, the The schedules and statements,  
17 other than the statement of intention, shall be filed with the petition  
18 in a voluntary case, or ~~if the petition is accompanied by a list of all~~

19 ~~the debtor's creditors and their addresses~~, within 15 days thereafter,  
20 except as provided in subdivisions (d), (e), and (h) of this rule. In  
21 an involuntary case the list in subdivision (a)(2), and the schedules  
22 and statements, other than the statement of intention, shall be filed  
23 by the debtor within 15 days after the entry of the order for relief.  
24 ~~Schedules-Lists, schedules,~~ and statements filed prior to the  
25 conversion of a case to another chapter shall be deemed filed in the  
26 converted case unless the court directs otherwise. Any extension  
27 of time for the filing of the schedules and statements may be  
28 granted only on motion for cause shown and on notice to the  
29 United States trustee and to any committee elected under § 705 or  
30 appointed under § 1102 of the Code, trustee, examiner, or other  
31 party as the court may direct. Notice of an extension shall be given  
32 to the United States trustee and to any committee, trustee, or other  
33 party as the court may direct.

34 \* \* \* \* \*

35 (g) The general partners of a debtor partnership shall  
36 prepare and file the list required under subdivision (a), the  
37 schedules of assets and liabilities, schedule of current income and  
38 expenditures, schedule of executory contracts and unexpired leases,  
39 and statement of financial affairs of the partnership. The court may  
40 order any general partner to file a statement of personal assets and

liabilities within such time as the court may fix.

#### COMMITTEE NOTE

Notice to creditors and other parties in interest is essential to the operation of the bankruptcy system. Sending notice requires a convenient listing of the names and addresses of the entities to whom notice must be sent, and virtually all of the bankruptcy courts have adopted a local rule requiring the submission of a list of these entities with the petition and in a particular format. These lists are commonly called the “mailing matrix”.

Given the universal adoption of these local rules, the need for such lists in all cases is apparent. Consequently, the rule is amended to require the debtor to submit such a list at the commencement of the case. This list may be amended when necessary. See Rule 1009(a).

The content of the list is described by reference to Schedules D through H of the Official Forms rather than by reference to creditors or persons holding claims. The cross reference to the Schedules as the source of the names for inclusion in the list ensures that persons such as codebtors or nondebtor parties to executory contracts and unexpired leases will receive appropriate notices in the case.

While this rule renders unnecessary, in part, local rules on the subject, this rule does not direct any particular format or form for the list to take. Local rules still may govern those particulars of the list.

Subdivision (c) is amended to reflect that subdivision (a)(1) no longer requires the debtor to file a schedule of liabilities with the petition in lieu of a list of creditors. The filing of the list is mandatory, and subdivision (b) of the rule requires the filing of schedules. Thus, subdivision (c) no longer needs to account for the possibility that the debtor can delay filing a schedule of liabilities when the petition is accompanied by a list of creditors. Subdivision (c) simply addresses the situation in which the debtor does not file schedules or statements with the petition, and the procedure for seeking an extension of time for filing.

Other changes are stylistic.

**RULE 3004. FILING OF CLAIMS BY DEBTOR OR TRUSTEE.**

1           If a creditor ~~fails to file~~ does not timely file a proof of claim  
2           Rule 3002(c) or 3003(c), on or before the meeting of creditors  
3           ~~called pursuant to § 341(a) of the Code,~~ the debtor or trustee may  
4           ~~do so in the name of the creditor,~~ file a proof of the claim within 30  
5           ~~days of~~ after the expiration of the time for filing claims prescribed  
6           by Rule 3002(c) or 3003(c), whichever is applicable. The clerk  
7           shall forthwith ~~mail~~ give notice of the filing to the creditor, the  
8           debtor and the trustee. ~~A proof of claim filed by a creditor shall~~  
9           ~~supersede the proof filed by the debtor or trustee.~~

COMMITTEE NOTE

The rule is amended to conform to § 501(c) of the Code. Under that provision, the debtor or trustee may file proof of a claim if the creditor fails to do so in a timely fashion. The rule previously authorized the debtor and the trustee to file a claim as early as the day after the first date set for the meeting of creditors under § 341(a). Under the amended rule, the debtor and trustee must wait until the creditor's opportunity to file a claim has expired. Providing the debtor and the trustee with the opportunity to file a claim ensures that the claim will participate in any distribution in the case. This is particularly important for claims that are nondischargeable.

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

Other changes are stylistic.

**RULE 3005. FILING OF CLAIM, ACCEPTANCE, OR REJECTION BY GUARANTOR, SURETY, INDORSER, OR OTHER CODEBTOR**

1 (a) FILING OF CLAIM. If a creditor ~~does not timely file~~~~has not~~  
2 ~~filed~~ a proof of claim under pursuant to Rule 3002 or 3003(c), any  
3 entity that is or may be liable with the debtor to that creditor, or  
4 who has secured that creditor, may, within 30 days after the  
5 expiration of the time for filing claims prescribed by Rule 3002(c)  
6 or 3003(c) whichever is applicable, ~~execute and~~ file a proof of the  
7 ~~such claim in the name of the creditor, if known, or if unknown, in~~  
8 ~~the entity's own name~~. No distribution shall be made on the claim  
9 except on satisfactory proof that the original debt will be  
10 diminished by the amount of distribution. ~~A proof of claim filed~~  
11 ~~by a creditor pursuant to Rule 3002 or 3003(c) shall supersede the~~  
12 ~~proof of claim filed pursuant to the first sentence of this~~  
13 ~~subdivision.~~

14 \* \* \* \* \*

COMMITTEE NOTE

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

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

Other amendments are stylistic.

**RULE 4008. DISCHARGE AND REAFFIRMATION HEARING FILING OF REAFFIRMATION AGREEMENT**

1            A reaffirmation agreement shall be filed not later than 30 days  
2            after the entry of an order granting a discharge or confirming a plan  
3            in a chapter 11 reorganization case of an individual debtor. The  
4            court, for cause, may extend the time, and leave shall be freely  
5            given when justice so requires. Not more than 30 days following  
6            the entry of an order granting or denying a discharge, or confirming  
7            a plan in a chapter 11 reorganization case concerning an individual  
8            debtor and on not less than 10 days notice to the debtor and the  
9            trustee, the court may hold a hearing as provided in § 524(d) of the  
10           Code. A motion made by the debtor for approval of a reaffirmation  
11           agreement shall be filed before or at the hearing.

COMMITTEE NOTE

The rule is amended to establish a deadline for filing reaffirmation agreements. The Code sets out a number of prerequisites to the enforceability of reaffirmation agreements. Among those requirements are that the agreements be entered into prior to the discharge and that they be filed with the court. Since the parties must make their agreement prior to the entry of the discharge, they will have at least 30 days to file the agreement with the court. Requiring the filing of reaffirmation agreements by a certain deadline also serves to inform the court of the need to hold

a hearing under § 524(d) whenever the agreement is not accompanied by an appropriate declaration or affidavit from counsel for the debtor.

The rule allows any party to the agreement to file it with the court. Thus, whichever party has a greater incentive to enforce the agreement usually will file it. In the event that the parties fail to timely file the reaffirmation agreement, the rule grants the court broad discretion to permit a late filing.

The rule also is amended by deleting the provisions formerly in the rule regarding the timing of the reaffirmation and discharge hearing. Instead, the rule leaves discretion to the courts to set the hearing at a time appropriate for the particular circumstances presented in the case and consistent with the scheduling needs of the parties.

#### **RULE 7004. PROCESS; SERVICE OF SUMMONS; COMPLAINT**

1 (a) SUMMONS; SERVICE; PROOF OF SERVICE

2 (1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b),  
3 (c)(1), (d)(1), (e)-(j), (l), and (m) F.R.Civ.P. applies in adversary  
4 proceedings. Personal service under ~~pursuant to~~ Rule 4(e)-(j)  
5 F.R.Civ.P. may be made by any person at least 18 years of age who  
6 is not a party, and the summons may be delivered by the clerk to  
7 any such person.

8 (2) The clerk may sign, seal, and issue a summons  
9 electronically by putting an "s/" before the clerk's name and  
10 including the court's seal on the summons.



COMMITTEE NOTE

This amendment specifically authorizes the clerk to issue a summons electronically. In some bankruptcy cases the trustee or debtor in possession may commence hundreds of adversary proceedings simultaneously, and permitting the electronic signing and sealing of the summonses for those proceedings increases the efficiency of the clerk's office without any negative impact on any party. The rule only authorizes electronic issuance of the summons. It does not address the service requirements for the summons. Those requirements are set out elsewhere in Rule 7004, and nothing in Rule 7004(a)(2) should be construed as authorizing electronic service of a summons.

**RULE 9006. TIME**

\* \* \* \* \*

1  
2 (f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR  
3 UNDER RULE 5 (b)(2)(C) or (D) F.R.CIV.P. When there is a  
4 right or requirement to ~~do some~~ act or undertake some proceedings  
5 within a prescribed period after service ~~service of a notice or other~~  
6 ~~paper and the notice or paper other than process is served~~ and that  
7 service is by mail or under Rule 5 (b)(2)(C) or (D) F. R. Civ. P.,  
8 three days ~~shall be~~ are added to after the prescribed period expires.

COMMITTEE NOTE

Rule 9006(f) is amended, consistent with a corresponding amendment to Rule 6 (e) of the F.R. Civ. P, to clarify the method of counting the number of days to respond after service either by mail or under Civil Rule 5(b)(2)(C) or (D). Three days are added after the prescribed period expires. If the prescribed period is less than 8 days, intervening Saturdays, Sundays, and legal holidays are excluded from the calculation under Rule 9006(a). Some illustrations may be helpful.

Assuming that there are no legal holidays and that a response is due in seven days, if a paper is filed on a Monday, the seven day response period commences on Tuesday and concludes on Wednesday of the next week. Adding three days to the end of the period would take one to Saturday. The response day would be the following Monday, two weeks after the filing of the initial paper. If the paper is filed on a Tuesday, the seven day response period would end on the following Thursday, and the response time would also be the following Monday. If the paper is mailed on a Wednesday, the seven day period would expire nine days later on a Friday. The response would again be due on the following Monday. If the paper is mailed on a Thursday, however, the seven day period ends on Monday, eleven days after the mailing of the service because of the exclusion of the two intervening Saturdays and Sundays. The response is due three days later on the following Thursday. If the paper is mailed on a Friday, the seven day period would conclude on a Tuesday, and the response is due three days later on a Friday.

No other change in the system of counting time is intended.

Other changes are stylistic.

### **III. Information Items**

#### *(1) Proposed Bankruptcy Legislation*

Congress continues to consider extensive reform of the Bankruptcy Code. A bill, H.R. 975, passed in the House of Representatives on March 19, 2003, and is pending in the Senate. Prospects for its passage are unclear at this time, although the Bill has been placed on the Senate Calendar.

The Advisory Committee has taken steps to prepare appropriate amendments to the Bankruptcy Rules and Official Forms in the event that the reform legislation is enacted. Professors Jacoby and Markell continue to assist the Advisory Committee as consultants on both the consumer and business aspects of bankruptcy reform. Since the effective date of the legislation is 180 days after enactment, for most provisions, the Advisory Committee is actively preparing and considering amendments and additions to the Bankruptcy Rules and Official Forms.

(2) *Draft Minutes*

Draft minutes of the April 2003 meeting of the Advisory Committee are attached.

ATTACHMENT

