

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

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

DATE: May 17, 2004

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

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The Advisory Committee also studied a number of proposals to amend the Bankruptcy Rules. After careful consideration, the Advisory Committee resolved to recommend that the Standing Committee approve for publication a preliminary draft of proposed amendments to Bankruptcy Rules . . . 2002 . . . and 9001 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.

II. Action Items

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B. Preliminary Draft of Proposed Amendments to Bankruptcy Rules 1009, 2002, 4002, 7004, and 9001, and Schedule I of Official Form 6.

The Advisory Committee recommends that the Standing Committee approve the following preliminary draft of proposed amendments to the Bankruptcy Rules and Official Forms for publication for comment.

1. Synopsis of Preliminary Draft of Proposed Amendments to Bankruptcy Rules 1009, 2002, 4002, 7004, and 9001, and Schedule I of Official Form 6.

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(b) Rule 2002(g) is amended by adding a new subdivision (g)(4) that authorizes entities and notice providers to agree on the manner and address to which service may be effected. The amendment is intended to facilitate notices to creditors that operate on a national basis, although the rule allows such agreements by any entity with any notice provider. A related amendment to Rule 9001 defines notice providers.

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(e) Rule 9001 is amended to add a definition of notice provider to the rule. The definition is to be read in conjunction with the proposed amendment to Rule 2002(g).

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2. *Text of Preliminary Draft of Proposed Amendments to Rules . . . 2002 and 9001*

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

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

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2 (g) ADDRESSING NOTICES.

3 (1) Notices required to be mailed under Rule 2002 to
4 a creditor, indenture trustee, or equity security holder shall be
5 addressed as such entity or an authorized agent has directed
6 in its last request filed in the particular case. For the purposes
7 of this subdivision –

8 (A) a proof of claim filed by a creditor or

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

** The amendment to Rule 9001 should be considered in tandem with the proposed amendment to Rule 2002. Rule 9001 as proposed to be amended is set out at the end of this section of the report.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

9 indenture trustee that designates a mailing address constitutes
10 a filed request to mail notices to that address, unless a notice
11 of no dividend has been given under Rule 2002(e) and a later
12 notice of possible dividend under Rule 3002(c)(5) has not
13 been given; and

14 (B) a proof of interest filed by an equity security
15 holder that designates a mailing address constitutes a filed
16 request to mail notices to that address.

17 (2) If a creditor or indenture trustee has not filed a
18 request designating a mailing address under Rule 2002(g)(1),
19 the notices shall be mailed to the address shown on the list of
20 creditors or schedule of liabilities, whichever is filed later. If
21 an equity security holder has not filed a request designating
22 a mailing address under Rule 2002(g)(1), the notices shall be
23 mailed to the address shown on the list of equity security
24 holders.

25 (3) If a list or schedule filed under Rule 1007

26 includes the name and address of a legal representative of an
27 infant or incompetent person, and a person other than that
28 representative files a request or proof of claim designating a
29 name and mailing address that differs from the name and
30 address of the representative included in the list or schedule,
31 unless the court orders otherwise, notices under Rule 2002
32 shall be mailed to the representative included in the list or
33 schedules and to the name and address designated in the
34 request or proof of claim.

35 (4) Notwithstanding Rule 2002(g) (1) - (3), an entity
36 and a notice provider may agree that when the notice provider
37 is directed by the court to give a notice, the notice provider
38 shall give the notice to the entity in the manner agreed to and
39 at the address or addresses the entity supplies to the notice
40 provider. That address is conclusively presumed to be a
41 proper address for the notice. The notice provider's failure to
42 use the supplied address does not invalidate any notice that is

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

43 otherwise effective under applicable law.

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COMMITTEE NOTE

A new paragraph (g)(4) is inserted in the rule. The new paragraph authorizes an entity and a notice provider to agree that the notice provider will give notices to the entity at the address or addresses set out in their agreement. Rule 9001(9) sets out the definition of a notice provider.

The business of many entities is national in scope, and technology currently exists to direct the transmission of notice (both electronically and in paper form) to those entities in an accurate and much more efficient manner than by sending individual notices to the same creditor by separate mailings. The rule authorizes an entity and a notice provider to determine the manner of the service as well as to set the address or addresses to which the notices must be sent. For example, they could agree that all notices sent by the notice provider to the entity must be sent to a single, nationwide electronic or postal address. They could also establish local or regional addresses to which notices would be sent in matters pending in specific districts. Since the entity and notice provider also can agree on the date of the commencement of service under the agreement, there is no need to set a date in the rule after which notices would have to be sent to the address or addresses that the entity establishes. Furthermore, since the entity supplies the address to the notice provider, use of that address is conclusively presumed to be proper. Nonetheless, if that address is not used, the notice still may be effective if the notice is otherwise effective under applicable law. This is the same treatment given under Rule 5003(e) to notices sent to governmental units at addresses other than those set out in that register of addresses.

The remaining subdivisions of Rule 2002(g) continue to govern the addressing of a notice that is not sent pursuant to an agreement described in Rule 2002(g)(4).

Public Comment on Proposed Amendment to Rule 2002:

No comments were received on the proposed amendment.

Changes Made After Publication and Comment:

No changes since publication.

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Rule 9001. General Definitions

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2 (9) “Notice provider” means any entity approved by
3 the Administrative Office of the United States Courts to give
4 notice to creditors under Rule 2002(g)(4).

5 (10) ~~(9)~~ “Regular associate” means any attorney
6 regularly employed by, associated with, or counsel to an
7 individual or firm.

8 (11) ~~(10)~~ “Trustee” includes a debtor in possession in
9 a chapter 11 case.

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

10 (12) ~~(H)~~ “United States trustee” includes an assistant
11 United States trustee and any designee of the United States
12 trustee.

COMMITTEE NOTE

The rule is amended to add the definition of a notice provider and to renumber the final three definitions in the rule. A notice provider is an entity approved by the Administrative Office of the United States Courts to enter into agreements with entities to give notice to those entities in the form and manner agreed to by those parties. The new definition supports the amendment to Rule 2002(g)(4) that authorizes a notice provider to give notices under Rule 2002.

Many entities conduct business on a national scale and receive vast numbers of notices in bankruptcy cases throughout the country. Those entities can agree with a notice provider to receive their notices in a form and at an address or addresses that the creditor and notice provider agree upon. There are processes currently in use that provide substantial assurance that notices are not misdirected. Any notice provider would have to demonstrate to the Administrative Office of the United States Courts that it could provide the service in a manner that ensures the proper delivery of notice to creditors. Once the Administrative Office of the United States Courts approves the notice provider to enter into agreements with creditors, the notice provider and other entities can establish the relationship that will govern the delivery of notices in cases as provided in Rule 2002(g)(4).

Public Comment on Proposed Amendment to Rule 9001:

No comments were received on the proposed amendment.

Changes Made After Publication and Comment:

No changes since publication.

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