

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE**

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

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Implementing E-Government Act

The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules submitted proposed uniform language for an amendment to Appellate Rule 25, and for new Bankruptcy Rule 9037, new Civil Rule 5.2, and new Criminal Rule 49.1 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments and new rules implement the privacy and security provisions of § 205 of the E-Government Act of 2002 (Pub. L. No. 107-347, as amended by Pub. L. No. 108-281), governing electronic filings in federal court. The amendments and rules were published for public comment for a six-month period. The scheduled public hearings were canceled because only one witness requested to testify. That witness testified at the Committee's January meeting with the chairs of the advisory committees present.

The proposed package of amendments and new rules is derived from the privacy policy adopted by the Judicial Conference in September 2001 to address concerns arising from public access to electronic case filings (JCUS-SEP/OCT 01, pp. 52-53). The Conference policy requires that documents in case files generally be made available electronically to the same extent that they are available at the courthouse, provided that certain "personal data identifiers" are redacted in the public file, including the first five digits of a social-security number, the name of a minor, and the date of a person's birth.

In accordance with the Act's call for uniformity, the proposed new rules are identical in many respects. For example, certain pre-existing records of administrative, agency, and state-court proceedings and pro se habeas corpus filings are exempted from the redaction requirement under each of the proposed rules. Under another uniform provision, a court may, for good cause, authorize redaction of information in addition to personal identifiers or limit a nonparty's remote electronic access to documents to safeguard privacy interests. Each proposed rule also permits the filer of a document to elect not to redact the filer's own personal-identifier information, waiving the rule's protections.

There are a few differences in the proposed rules to account for factors unique to each set of rules. Proposed Civil Rule 5.2 specifically limits remote access to social security and immigration electronic case filings. The Social Security Administration and Department of Justice asked the advisory committee to give special treatment to these cases due to the prevalence of sensitive information and the volume of filings. Remote electronic access by nonparties is limited in these cases to the docket and the written dispositions of the court unless the court orders otherwise. Proposed new Criminal Rule 49.1 permits the partial redaction of an individual's home address and an exemption from redaction for certain information needed for forfeitures. Additional filings are exempted from the redaction requirement, including arrest and search warrants, charging documents, and documents filed before the filing of a criminal charge. Proposed Bankruptcy Rule 9037 uses several different terms consistent with terms used in the Bankruptcy Code. It also requires disclosure of the full names of a debtor, even if a minor. New Appellate Rule 25(a)(5) would apply the privacy rule that had applied to the case below to govern in the case on appeal.

The Committee on Court Administration and Case Management raised a concern during the public-comment period that remote electronic access to an indictment might jeopardize the

safety of the foreperson signing it. Under Criminal Rule 6(c), the foreperson must sign all indictments, and under Rule 6(f) an indictment must be returned in open court. No empirical data has been presented showing added risks to forepersons whose signatures on indictments have been publicly available. Such evidence as there is suggests that forepersons have not been subject to threat because the indictment has been part of the public case file. Nor is an easy practical administrative solution apparent to redact a foreperson's name from the record. For these reasons and because the advisory committee determined that redaction of the foreperson's name would raise sensitive policy questions about the public nature of criminal proceedings, the advisory committee decided that the issue requires further careful study. The advisory committee will undertake this study promptly. However, the advisory committee decided that the study should not delay proceeding with the proposed new rule. The Committee on Court Administration and Case Management approves of this approach to this issue.

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FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1, and new Rules 6003, 9005.1, and 9037 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments and rules were circulated to the bench and bar for comment in August 2005. The scheduled public hearing on the proposed changes was canceled because no one asked to testify.

The proposed amendment to Rule 1014 is consistent with general case law and states explicitly that a court on its own motion may dismiss or transfer a case that had been initially filed in an improper district.

The proposed amendment to Rule 3007 prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. The amendment also allows a party to join a maximum of 100 claims in a single, omnibus objection. The amendment specifies the content and limits the nature of objections that may be joined in the single filing. It also establishes minimum standards intended to protect the claimants' due process rights.

The proposed amendment to Rule 4001 requires a movant to provide a proposed order granting relief, together with notice to interested parties, when requesting authority to use cash collateral, to obtain credit, or to obtain approval of agreements to provide adequate protection, modify, or terminate the stay, or to grant a senior or equal lien on property. The amendment requires the movant to include within the motion a statement not to exceed five pages that concisely describes the material provisions of the relief requested.

Proposed new Rule 6003 limits the granting of interim and final relief by the court during the first 20 days after commencement of a case. Absent a showing of immediate and irreparable harm, a court cannot grant relief during the first 20 days of a case on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate (other than a motion under Rule 4001), and motions to assume or assign executory contracts and unexpired leases. The proposed rule is designed to alleviate the acute time pressures present at the start of a case so that full and careful consideration can be given to matters that may have a fundamental and long-lasting impact on the case.

Rule 6006 would be amended to authorize a movant to file an omnibus motion rejecting, or under specific circumstances assuming or assigning, a maximum of 100 executory contracts or unexpired leases. The amendment establishes minimum standards intended to ensure the protection of the claimants' due process rights. Under the amendment, the trustee may assume, but not assign, multiple executory contracts and unexpired leases in the omnibus motion.

The proposed amendment to Rule 7007.1 clarifies that a party must file its corporate ownership statement with the first paper filed with the court in an adversary proceeding.

Proposed new Rule 9005.1 makes Civil Rule 5.1, dealing with notice requirements in cases involving a constitutional challenge of a statute, applicable to all contested matters and other proceedings in a bankruptcy case.

Proposed new Rule 9037 implements the E-Government Act and has been discussed above.

The Committee concurred with the recommendations of the advisory committee.

Recommendation: That the Judicial Conference approve the proposed amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1, and new Bankruptcy Rules 6003, 9005.1, and 9037 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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