

**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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ELECTRONIC CASE FILING

Rules Recommended for Approval and Transmission

The Advisory Committees on Appellate, Bankruptcy, and Civil Rules submitted proposed uniform amendments to Appellate Rule 25, Bankruptcy Rule 5005, and Civil Rule 5 with a recommendation that they be approved and transmitted to the Judicial Conference. (Federal Rule of Criminal Procedure 49(d) incorporates by reference the filing procedures in Civil Rule 5.) The proposed amendments authorize a court to require electronic case filing by local rule. The amendments were published for public comment for a three-month period beginning November 10, 2004, and expiring on February 15, 2005. Public hearings were scheduled to coincide with hearings earlier scheduled for other proposed rules amendments, and a separate hearing was set for the amendment to the Appellate Rules, which had no other proposed amendments. Only one person asked to testify. Several written comments were received on the proposals.

In August 2004, the Committee on Court Administration and Case Management (CACM) requested that the federal rules of practice be amended on an expedited basis to authorize federal courts to adopt local rules that require parties to file papers electronically. The existing rules authorize a court to adopt local rules that “permit” a party to file papers by electronic means. Although many courts have adopted local rules that require electronic filing, some courts have been reluctant to do so without a more explicit grant of authority.

CACM urged the Committee to recommend these rules amendments to promote broader use of the Case Management/Electronic Case Files system now being deployed in the courts nationwide. CACM concluded that mandatory electronic case filing would achieve significant cost savings for the federal courts.

Several major bar organizations, including the American Bar Association, expressed concern during the public comment period that mandatory electronic case filing would pose hardships for litigants who do not have access to a personal computer and suggested that the national rules require that any local rule include appropriate exceptions. Such a provision was not included in the version published for public comment because a study of existing local court rules requiring parties to file papers electronically confirmed that each set of rules already excepted pro se litigants and others for good cause. Nonetheless, in light of the public comment and concerns, the advisory committees revised the proposed amendments to authorize a court to require electronic case filing by local rule only if reasonable exceptions are allowed. The Appellate Rules Committee added a provision in its proposed Committee Note to recognize that a local rule may direct a party to also file a hard copy of a paper that must be filed by electronic means. This provision responds to distinctive features of appellate practice and is not included in the other proposed rules.

The Committee concurred with the advisory committees' recommendations.

Recommendation: That the Judicial Conference approve proposed amendments to Appellate Rule 25(a)(2)(D), Bankruptcy Rule 5005(a)(2), and Civil Rule 5(e) 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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FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1009, 5005(c), and 7004 with a recommendation that they be approved and transmitted to the Judicial Conference. The scheduled public hearings on the amendments were canceled because the only person submitting a timely request to appear agreed instead to submit written comments.

The proposed amendment to Rule 1009 requires a debtor to submit a corrected social security number when the debtor learns that a previously submitted social security number is inaccurate and to provide notice of the corrected number to all others who have received the inaccurate number.

Under the proposed amendment to Rule 5005(c), the clerk of the bankruptcy appellate panel and district judges are added to the list of officers who can transmit erroneously delivered papers to the clerk of the bankruptcy court.

The proposed amendment to Rule 7004 makes clear that the debtor's attorney must be served with a copy of any summons and complaint filed against the debtor without regard to the manner in which the summons and complaint was served on the debtor, including personal service. Under the current rule, the debtor's attorney must be served only if the summons and complaint was served on the debtor by mail. Service on the debtor's attorney may be made by any method permitted under Civil Rule 5(b).

The advisory committee withdrew a proposed amendment to Rule 4002 implementing § 521 of the Bankruptcy Code, which requires the debtor to "surrender to the trustee" information and documentation of income and financial assets at the § 341 creditors' meeting. It withdrew the amendment because the Bankruptcy Abuse Prevention and Consumer Protection

Act of 2005 (Pub. L. No. 109-8) includes several provisions that require amendments to Rule 4002, which will be considered at a later date.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference approve the proposed amendments to Bankruptcy Rules 1009, 5005(c), and 7004 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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