

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

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

**DATE: December 15, 2003**

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

## **I. Introduction**

The Advisory Committee on Bankruptcy Rules met on September 18-19, 2003, in Stevenson, Washington. The Committee considered a number of issues and will continue discussion of several matters at its next meeting. The Committee also adopted several proposed amendments to the Bankruptcy Rules and Forms for recommendation to the Standing Committee.

## **II. Action Items**

### *A. Preliminary Draft of Proposed Amendments to Bankruptcy Rules . . . 9036*

#### 1. Synopsis of Proposed Amendments

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B. Rule 9036 is amended to delete the current language that requires the sender of an electronic notice to have received confirmation of receipt of that notice for the notice to be complete. At the time the rule was promulgated, the sender of an electronic communication generally would receive a notification that the recipient of the notice actually received it. For the vast majority of internet service providers, these receipt notifications are no longer given. Moreover, the general level of confidence with electronic communications has increased to the point that it is presumed that these messages are received in the proper course, at least to the extent that other forms of notice (such as by regular mail) also are received. The amendment affirmatively states that the notice is complete upon its transmission. This is consistent with the treatment of notice by regular mail under the Bankruptcy Rules. It is also consistent with Civil Rule 5(b)(2)(B) and (D) that provide that service by mail and by electronic means is complete upon transmission.

The text of the proposed amendments to Bankruptcy Rules . . .9036 are set out at the end of this Report.

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Attachments: Proposed Amendments to Bankruptcy Rules . . . 9036

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

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**Rule 9036. Notice by Electronic Transmission**

1           Whenever the clerk or some other person as directed  
2           by the court is required to send notice by mail and the entity  
3           entitled to receive the notice requests in writing that, instead  
4           of notice by mail, all or part of the information required to be  
5           contained in the notice be sent by a specified type of  
6           electronic transmission, the court may direct the clerk or other  
7           person to send the information by such electronic  
8           transmission. ~~Notice by electronic transmission is complete,~~  
9           ~~and the sender shall have fully complied with the requirement~~  
10          ~~to send notice, when the sender obtains electronic~~  
11          ~~confirmation that the transmission has been received.~~ Notice  
12          by electronic means is complete on transmission.

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

### COMMITTEE NOTE

The rule is amended to delete the requirement that the sender of an electronic notice must obtain electronic confirmation that the notice was received. The amendment provides that notice is complete upon transmission. When the rule was first promulgated, confirmation of receipt of electronic notices was commonplace. In the current electronic environment, very few internet service providers offer the confirmation of receipt service. Consequently, compliance with the rule may be impossible, and the rule could discourage the use of electronic noticing.

Confidence in the delivery of email text messages now rivals or exceeds confidence in the delivery of printed materials. Therefore, there is no need for confirmation of receipt of electronic messages just as there is no such requirement for paper notices.

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#### Public Comment on Proposed Amendment to Rule 9036:

No comments were received on the proposed amendment.

#### Changes Made After Publication and Comment:

No changes since publication.