

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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JERRY E. SMITH
EVIDENCE RULES

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

* * * * *

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.

* * * * *

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.

*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.

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.

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**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

The Advisory Committee on Bankruptcy Rules met on March 25-26, 2004, at Amelia Island, Florida. The Advisory Committee considered public comments regarding the preliminary draft of proposed amendments to Bankruptcy Rules 1007, 3004, 3005, 4008,* 7004, and 9006 that were published in August 2003. The Advisory Committee received only seven comments on the proposed amendments to the Rules, and the comments are summarized later in this report. Since no person who submitted a written comment requested to appear at the public hearing scheduled for January 30, 2004, the hearing was canceled. The Advisory Committee recommends that the Standing Committee approve the amendments and transmit them to the Judicial Conference. The proposed amendments and the comments received thereon are set out below in the Action Items section of this report.

Amendments to three Official Forms, Forms 6-G, 16D, and 17, also are recommended for approval by the Standing Committee and transmission to the Judicial Conference. The amendments to Forms 16D and 17 are technical in nature and are necessary because of a previous amendment effective December 1, 2003, that abrogated Official Form 16C. These amendments are recommended with an effective date of December 1, 2004. The amendments to Official Form 6-G are necessary because of the amendment proposed to Rule 1007 that will become effective no sooner than December 1, 2005. Thus, the recommended effective date for the amendments to Official Form 6-G is December 1, 2005.

*The Judicial Conference later withdrew the proposed amendment to Rule 4008 after Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which contained provisions addressing the same subject matter.

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 1009, 2002, 4002, 7004, and 9001, and to Schedule I of Official Form 6. 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

- A. Proposed Amendments to Bankruptcy Rules 1007, 3004, 3005, 4008, 7004, and 9006, and Official Forms 6, 16D, and 17 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference.

The Advisory Committee on Bankruptcy Rules recommends that the Standing Committee approve the following amendments for submission to the Judicial Conference.

1. *Public Comment.*

The preliminary draft of the proposed amendments to Bankruptcy Rules 1007, 3004, 3005, 4008, 7004, and 9006 was published for comment in August 2003. A public hearing on the preliminary draft was scheduled for January 30, 2004, but there were no requests to appear at the hearing. There were only seven comments on the proposals, and they are summarized below immediately following each of the rules to which the particular

comment applied. The Advisory Committee reviewed these comments and approved the amendments to the rules either as published or with slight changes that are described in the Changes Made After Publication section.

2. *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 provision 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 provides the court 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.
- (g) Schedule G of Official Form 6 is amended to delete the note that informed the preparer of the Schedule that the entities listed on the schedule would not automatically receive notice of the case. The amendment to Rule 1007 will require the person who prepares the schedules to list the entities on the mailing matrix of persons to whom notice of the case will be sent.
- (h) Official Form 16D is amended to conform to the changes made by the December 1, 2003, abrogation of Official Form 16C.
- (i) Official Form 17 is amended to conform to the changes made by the December 1, 2003, abrogation of Official Form 16C.

3. *Text of Proposed Amendments to Rules 1007, 3004, 3005, 4008, 7004, and 9006.*

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

Rule 1007. Lists, Schedules, and Statements; Time Limits

1 (a) LIST OF CREDITORS AND EQUITY SECURITY
2 HOLDERS, AND CORPORATE OWNERSHIP
3 STATEMENT.

4 (1) *Voluntary Case.* In a voluntary case, the debtor
5 shall file with the petition a list containing the name and
6 address of each creditor ~~unless the petition is accompanied by~~
7 ~~a schedule of liabilities~~ entity included or to be included on
8 Schedules D, E, F, G, and H as prescribed by the Official
9 Forms. If the debtor is a corporation, other than a
10 governmental unit, the debtor shall file with the petition a
11 corporate ownership statement containing the information
12 described in Rule 7007.1. The debtor shall file a

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

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

13 supplemental statement promptly upon any change in
14 circumstances that renders the corporate ownership statement
15 inaccurate.

16 (2) *Involuntary Case.* In an involuntary case, the
17 debtor shall file within 15 days after entry of the order for
18 relief, a list containing the name and address of each creditor
19 ~~unless a schedule of liabilities has been filed~~ entity included
20 or to be included on Schedules D, E, F, G, and H as
21 prescribed by the Official Forms.

22 * * * * *

23 (c) TIME LIMITS. In a voluntary case, the The
24 schedules and statements, other than the statement of
25 intention, shall be filed with the petition ~~in a voluntary case,~~
26 ~~or if the petition is accompanied by a list of all the debtor's~~
27 ~~creditors and their addresses,~~ within 15 days thereafter, except
28 as otherwise provided in subdivisions (d), (e), (f), and (h) of
29 this rule. In an involuntary case, the list in subdivision (a)(2),

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47 liabilities, schedule of current income and expenditures,
48 schedule of executory contracts and unexpired leases, and
49 statement of financial affairs of the partnership. The court
50 may order any general partner to file a statement of personal
51 assets and liabilities within such time as the court may fix.

52 * * * * *

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.

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Changes Made After Publication and Comment:

No changes since publication.

Rule 3004. Filing of Claims by Debtor or Trustee

1 If a creditor ~~fails to file~~ does not timely file a proof of
2 claim under Rule 3002(c) or 3003(c), ~~on or before the first~~
3 ~~date set for the meeting of creditors called pursuant to~~
4 ~~§ 341(a) of the Code~~, the debtor or trustee may do so in the

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5 ~~name of the creditor, file a proof of the claim~~ within 30 days
6 after the expiration of the time for filing claims prescribed by
7 Rule 3002(c) or 3003(c), whichever is applicable. The clerk
8 shall forthwith ~~mail~~ give notice of the filing to the creditor,
9 the debtor and the trustee. ~~A proof of claim filed by a creditor~~
10 ~~pursuant to Rule 3002 or Rule 3003(c), shall supersede the~~
11 ~~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.

* * * * *

Changes Made After Publication and Comment:

No changes were made after publication. The Advisory Committee concluded that Mr. Van Allsburg's suggestion goes beyond the scope of the published proposal. Consequently, the Committee declined to adopt the suggestion but may consider it in greater detail at a future meeting.

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
2 ~~has not filed~~ a proof of claim under ~~pursuant to~~ Rule 3002(c)
3 or 3003(c), any entity that is or may be liable with the debtor
4 to that creditor, or who has secured that creditor, ~~may~~, may
5 file a proof of the claim within 30 days after the expiration of
6 the time for filing claims prescribed by Rule 3002(c) or Rule
7 3003(c) whichever is applicable, ~~execute and file a proof of~~
8 ~~claim in the name of the creditor, if known, or if unknown, in~~
9 ~~the entity's own name.~~ No distribution shall be made on the

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10 claim except on satisfactory proof that the original debt will
11 be diminished by the amount of distribution. ~~A proof of~~
12 ~~claim filed by a creditor pursuant to Rule 3002 or 3003(c)~~
13 ~~shall supersede the proof of claim filed pursuant to the first~~
14 ~~sentence of this subdivision.~~

15 * * * * *

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.

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Changes Made After Publication and Comment:

- (a) The reference on line 2 of Rule 3005 to “Rule 3002 or 3003(c)” was changed to read “Rule 3002(c) or 3003(c)” to make it parallel to the language in Rule 3004.
- (b) The phrase “file a proof of the claim” from line 7 of the proposed rule was moved up to line 4 of the proposed amendment immediately after the word “may”. This makes the structure of Rules 3004 and 3005 more consistent.

Rule 4008. Discharge and Reaffirmation Hearing Filing of Reaffirmation Agreement

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

- 10 FEDERAL RULES OF BANKRUPTCY PROCEDURE
11 ~~A motion by the debtor for approval of a reaffirmation~~
12 ~~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.

* * * * *

Changes Made After Publication and Comment:

No changes were made after publication. The Advisory Committee considered the public comments and concluded that the rule should allow post discharge filing of reaffirmation agreements notwithstanding the issues raised in the public comments. In particular, the Committee recognized the problems that can arise if the reaffirmation agreement is not filed until 30 days after the discharge is entered. Nevertheless, the post-discharge filing of the reaffirmation agreement should not itself require the reopening of the case, so the prior action of closing the case should not be too problematic. The filing of a reaffirmation agreement without a declaration or affidavit by counsel for the debtor will inform the court that a hearing must be scheduled, but again may not require a reopening of the case.

The Advisory Committee considered the timing of the filing and selected thirty days after the discharge for several reasons. Most significantly, the timing of the entry of the discharge is subject to local practice, and in many districts the discharge order is entered quite early in a case. The debtor and creditor who are parties to the reaffirmation agreement may not know when the order will be entered, and if the agreement is made before that time, it should still be enforceable even if it takes a bit longer to accomplish the filing of the agreement with the court. Moreover, the fairly short time after the entry of the discharge that is allowed for filing the agreement should not delay the proceedings generally, and it should bring whatever applicable issues need to be addressed to the attention of the bankruptcy court in a timely fashion. Nothing in the rule as amended would prevent the clerk from closing the case as expeditiously as under current practice. Finally, any delay in the closing of the case

should not postpone collection efforts of creditors because § 362(c)(2)(C) of the Bankruptcy Code would already have operated to dissolve the stay of actions against the debtor.

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),

3 (b), (c)(1), (d)(1), (e)-(j), (l), and (m) F.R.Civ.P. applies in

4 adversary proceedings. Personal service under pursuant to

5 Rule 4(e)-(j) F.R.Civ.P. may be made by any person at least

6 18 years of age who is not a party, and the summons may be

7 delivered by the clerk to 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.

11 * * * * *

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.

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Changes Made After Publication and Comment:

No changes were made after publication.

Rule 9006. Time

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1

2

(f) ADDITIONAL TIME AFTER SERVICE BY MAIL

3

OR UNDER RULE 5 (b)(2)(C) or (D) F.R.CIV.P. When

4

there is a right or requirement to ~~do some~~ act or undertake

5

some proceedings within a prescribed period after service of

6

~~a notice or other paper and the notice or paper other than~~

7

~~process is served~~ and that service is by mail or under Rule 5

8

(b)(2)(C) or (D) F. R. Civ. P., three days ~~shall be~~ are added to

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9 after the prescribed period would otherwise expire under Rule
10 9006(a).

11 * * * * *

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, before the application of Rule 9006(f), 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.

Under existing Rule 9006(a), 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 extend it to Saturday, but because the response period ends on a weekend, 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 initial seven-day period would expire nine days later on a Friday, but the response would again be due on the following Monday because of Rule 9006(f). 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.

* * * * *

Changes Made After Publication and Comment:

The phrase “would otherwise expire under Rule 9006(a)” was added to the end of the rule to clarify further that the three day extension is to be added to the end of the period that is established under the counting provisions of Rule 9006(a). This also maintains a parallel construction with Civil Rule 6(e) in which the same addition to the rule was made after the public comment period.

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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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(g) ADDRESSING NOTICES.

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

*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.

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8 (A) a proof of claim filed by a creditor or
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 a
22 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 includes
26 the name and address of a legal representative of an infant or
27 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

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42 use the supplied address does not invalidate any notice that is
43 otherwise effective under applicable law.

44 * * * * *

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

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

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

10 (12) ~~(11)~~ “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

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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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