

March 23, 1992

To: ADVISORY COMMITTEE ON BANKRUPTCY RULES
From: CHARLES ALAN WRIGHT

The Subcommittee on Style was informed that you are meeting later this week. We thought it would be useful to review your published draft of proposed amendments so that at your meeting you will have an idea of the kinds of stylistic changes we are inclined to suggest.

This morning the members of the Subcommittee on Style and our Consultant, Bryan A. Garner, had a lengthy conference call discussing your draft and the changes that we and our Consultant thought might be improvements. The guidelines under which we worked are set out later in this memorandum in the "Preliminary Note". Because your meeting is coming up so shortly, there has not been time for us to give you a redlined version of the draft or a clean copy of what your amendments would look like with the changes we suggest. Instead Mr. Garner is sending those to Washington with the changes handwritten in a fashion that we hope will be legible.

The Subcommittee has been concerned on how to explain stylistic changes in the Notes to amended rules. In a memorandum this morning to my colleagues I proposed a method for doing this. My suggestion was that the following be added as a final paragraph in the Advisory Committee Note to each rule in which changes have been made for reasons of style.

Other amendments are stylistic and make no substantive change. See Preliminary Note on Style.

At the beginning of each set of rules that are to be sent on to the Judicial Conference this year we would include the following.

Preliminary Note on Style

It is important that rules adopted by the Supreme Court, and having the force of law, be grammatically and stylistically correct, but it is even more important that they be stated with as much clarity as the subject matter permits. Accordingly in 1993 the Standing Committee on Rules of Practice and Procedure created a Subcommittee on Style to review proposed amendments with these goals in mind. As the Notes to particular rules indicate, a number of changes have been made for reasons of style.

The Subcommittee has reviewed only those rules for which other amendments are submitted for substantive or technical reasons. This means that stylistic changes are here proposed even though the original form of words remains unchanged in other rules. So that this will not itself lead to unclarity in the rules, the Subcommittee has used the following guidelines in determining when to propose changes.

1. Clarity of meaning. Where it will clarify the meaning of a rule, style changes have been made in a proposed amendment of an existing rule, even if this places the style of the amended rule at odds with the style of other rules that are not being amended.

For example, the word "shall" is used in several different ways in the rules. It is sometimes used in a permissive rather than a mandatory sense, it sometimes purports to impose an obligation on the wrong actor, and it is sometimes used as a future-tense modal verb rather than as a mandatory verb. In those rules now being amended, the following principles have been followed: (1) "shall" is used only to denote a duty; (2) "may" is used to denote a privilege or discretionary power; (3) "is entitled to" is used to denote a right; (4) "may not" is used to denote a prohibition; and (5) "must" is used to denote a condition precedent or subsequent.

2. Substantive changes. Stylistic changes do not change the substance. If it is unclear whether a change in the interest of clarity would alter the substantive meaning of a rule, this has been reviewed with the Advisory Committee to be sure that there is no substantive change.

3. Departure from prevalent style in other rules. Changes that are purely stylistic and that also depart from the prevalent style in other rules have been avoided. The stylistic improvement that might be made is outweighed by the cost in reader uncertainty on why one form of words is used in one rule and a different form in many other rules.

4. Style changes without cost. If a change improves style, even though not essential to clarity, the change has been made if there is no significant likelihood that anyone will be confused by it.

For example, there is great variation among the various sets of rules promulgated by the Supreme Court, and even within a particular set, on whether and how to capitalize words in the titles of rules or subdivisions of rules. If the capitalization in the titles in a rule to be amended for other reasons departs from the prevalent usage, a change is here proposed.

DRAFT

3-24-92

As marked by Bryan Gomez for the Style Subcommittee

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

31

Rule 1010. Service of Involuntary Petition and Summons; Petition Commencing Ancillary Case

1 On the filing of an involuntary petition or a
 2 petition commencing a case ancillary to a foreign
 3 proceeding, the clerk shall forthwith issue a
 4 summons for service. When an involuntary petition
 5 is filed, service ^{must} ~~shall~~ be made on the debtor.
 6 When a petition commencing an ancillary case is
 7 filed, service ^{must} ~~shall~~ be made on the parties against
 8 whom relief is sought ^{under} ~~pursuant to~~ § 304(b) of the
 9 Code and on ^{any} ~~such~~ other parties ^{that} ~~by~~ the court ^{specifies.} ~~may~~
 10 ~~directly.~~ The summons ~~shall conform to the~~
 11 ~~appropriate Official Form and a copy shall~~ ^{must} be
 12 served with a copy of the petition in the manner
 13 provided for service of a summons and complaint by
 14 Rule 7004(a) or (b). If service cannot be so made,
 15 the court may order ^{that} ~~the~~ summons and petition ^{to} ~~be~~
 16 served by mailing copies to the party's last known
 17 address, and by ^{at least} ~~not less than~~ one publication in a
 18 manner and form directed by the court. The summons
 19 and petition may be served on the party anywhere.

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

9:45 p.m. 3-24-92

of the Federal Rules of Civil Procedure

32 FEDERAL RULES OF BANKRUPTCY PROCEDURE

20 Rule 7004(f) and Rule 4(g) and (h) F.R.Civ.P. apply
21 when service is made or attempted under this rule.

COMMITTEE NOTE

This rule is amended to delete the reference to the official form. The official form for the summons was abrogated in 1991.

4 Rule 1013. Hearing and Disposition an
of Petition in Involuntary Cases

(le)

1 (a) CONTESTED PETITION. The court shall
2 determine the issues of a contested petition at the
3 earliest practicable time and forthwith enter an
4 order for relief, dismiss the petition, or enter
5 ^{any} other appropriate orders.

(le)

6 (b) DEFAULT. If no pleading or other defense
7 to a petition is filed within the time provided by
8 Rule 1011, the court, ^{shall} on the next day, or as soon
9 thereafter as practicable, shall enter an order for
10 the relief ^{requested} ~~prayed for~~ in the petition.

11 (c) [~~abrogated~~] ORDER FOR RELIEF. ~~An order for~~
12 ~~relief shall conform substantially to the~~
13 ~~appropriate Official Form~~

COMMITTEE NOTE

Subdivision (c) is abrogated because the official form for the order for relief was abrogated in 1991.

Rule 1017. Dismissal or Conversion of Case; Suspension

.....

(c)

(d) PROCEDURE FOR DISMISSAL OR CONVERSION. A proceeding to dismiss a case or convert a case to another chapter, except ^{under} ~~pursuant to~~ §§ 706(a), 707(b), 1112(a), 1208(a) or (b), or 1307(a) or (b), is governed by Rule 9014. Conversion or dismissal ^{under} ~~pursuant to~~ §§ 706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and served as required by Rule 9013. A chapter 12 or chapter 13 case ^{is} ~~shall~~ be converted without court order on the filing by the debtor of a notice of conversion ^{under} ~~pursuant to~~ §§ 1208(a) or 1307(a) and the date of ~~the filing of the notice shall be deemed~~ the date of ~~the~~ conversion order for the purpose purposes of applying § 348(c) of the Code and Rule 1019. The clerk shall forthwith ^{send} ~~transmit~~ to the United States trustee a copy of ^{the} ~~each~~ notice.

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of the Code must

of the Codes

filing

entry of the

becomes

.....

* Please note: The Style Subcommittee does not want this change to modify the substance of the amendment.

COMMITTEE NOTE

Subdivision (d) is amended to clarify that the date of the filing of a notice of conversion in a chapter 12 or chapter 13 case is treated as the date of the entry of the order of conversion for the purpose of applying Rule 1019.

conversion

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

(alc)

1 (j) ~~NOTICES TO THE UNITED STATES.~~ ^{each} ~~Copies of~~

2 [^] notices required to be mailed to all creditors

3 under this rule ~~shall~~ ^{must} be mailed (1) in a chapter 11

4 reorganization case, to the Securities and Exchange

5 Commission at Washington, D.C., and at any other

6 place the Commission designates, ~~in a filed writing~~ ^{but only}

7 if the Commission has filed ^{either} a notice of appearance

8 in the case or ~~has made~~ ^{written} a request ^{to receive notices;} ~~in a filed~~ ^{...}

9 ~~writing;~~

A copy of

COMMITTEE NOTE

Subdivision (j) is amended to avoid the necessity of sending an additional notice to the Washington, D.C. address of the Securities and Exchange Commission if the Commission prefers to have notices sent only to a local

FEDERAL RULES OF BANKRUPTCY PROCEDURE 35

office. This change also clarifies that notices required to be mailed ~~perovant~~ ^{under} to this rule must be sent to the Securities and Exchange Commission only if it has filed a notice of appearance or has ~~made~~ ^{made a request} ~~in writing~~ ^{in writing} filed with the court.

filed with the court a written

Rule 2003. Meeting of Creditors or Equity Security Holders

lc

1 (a) DATE AND PLACE. In a chapter 7 liquidation
2 or a chapter 11 reorganization case. Unless the
3 case is a chapter 9 municipality case or a chapter
4 12 family farmer's debt adjustment case, the United
5 States trustee shall call a meeting of creditors to
6 be held ~~not less~~ ^{no fewer} than 20 ~~not~~ ^{and no} more than 40 days
7 after the order for relief. In a chapter 12 family-

hyphen

hyphen

8 farmer debt-adjustment case, the United States
9 trustee shall call a meeting of creditors to be
10 held ~~not less~~ ^{no fewer} than 20 ~~not~~ ^{and no} more than 35 days after
11 the order for relief. In a chapter 13 individual's

hyphen

12 debt-adjustment case, the United States trustee
13 shall call a meeting of creditors to be held ~~not~~ ^{no}
14 ~~less~~ ^{fewer} than 20 ~~not~~ ^{and no} more than 50 days after the order
15 for relief. If ~~there is an appeal from or a motion~~ ^{a party appeals from or moves}
16 to vacate the order for relief, or ~~if there is a~~ ^{filed}
17 motion to dismiss the case, the United States

36 FEDERAL RULES OF BANKRUPTCY PROCEDURE

18 trustee may set a later ^{date} ~~time~~ for the meeting. The *United States*
 19 ~~meeting may be held at a regular place for holding~~
 20 ~~court or at any other~~ ^{convenient} place designated by the
 21 ~~United States trustee~~ within the district
 22 ~~convenient for the parties in interest.~~ If the
 23 ~~United States trustee designates a~~ place ^{designated} for the
 24 meeting which is not regularly ^{occupied} ~~scheduled~~ by the
 25 United States trustee or ^{by} an assistant who may
 26 preside ^{at} at the meeting, the meeting may be held not
 27 more than 60 days after the order for relief.

* * * * *

COMMITTEE NOTE

Subdivision (a) is amended to extend by ten days the time for holding the meeting of creditors in a chapter 13 case. This extension will provide more flexibility for scheduling the meeting of creditors.

Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination

* * * * *

(lc)

1 (b) REMOVAL. ~~Whenever any order to bring the~~
 2 ~~debtor before the court is issued under this rule~~
 3 ~~and the debtor is found in a district other than~~
 4 that of the court issuing the order, the debtor may

Line 23 -
 Query: Does
 "place" refer to
 a building or
 to a city?
 Can we sharpen
 the language?

FEDERAL RULES OF BANKRUPTCY PROCEDURE 37

5 be taken into custody under the order and removed
6 in accordance with the following rules:

7 (1) If ^(the debtor is) taken at a place ^{within} less than 100
8 miles from the place ^{where the order issued,} ~~of issue of the order,~~ the
9 debtor ~~shall~~ ^{must} be brought forthwith before the court
10 that issued the order. ^(the debtor is)

11 (2) If ^(the debtor is) taken at a place 100 miles or more
12 from the place ^{where} ~~of issue of~~ the order ^{issued}, the debtor
13 ~~shall~~ ^{must} be brought without unnecessary delay before
14 the nearest ^{available} ~~United States~~ magistrate judge,
15 bankruptcy judge, or district judge. If, after
16 hearing ^{or waiver thereof, the adjudicator} ~~the magistrate judge, bankruptcy judge, or~~
17 ~~district judge~~ finds that an order has issued under
18 this rule and that the person in custody is the
19 debtor, ~~or if the person in custody waives a~~
20 ~~hearing,~~ ^{adjudicator} ~~the magistrate judge, bankruptcy judge, or~~
21 ~~district judge,~~ shall issue an order of removal, and
22 the person in custody ^{must} ~~shall~~ be released on
23 conditions ^{ensuring} ~~ensuring~~ prompt appearance before the
24 court ^{that} ~~which~~ issued the order to compel the
25 attendance.

26

* * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

COMMITTEE NOTE

Subdivision (b)(2) is amended to conform to § 321 of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, which changed the title of "United States magistrate" to "United States magistrate judge."

Rule 3002. Filing Proof of Claim or Interest

1 (a) Necessity for Filing. An unsecured ~~A~~
2 creditor or an equity security holder must file a
3 proof of claim or interest in accordance with this
4 rule for the claim or interest to be allowed,
5 except as provided in Rules 1019(3), 3003, 3004 and
6 3005.

7 * * * * *

8 (c) TIME FOR FILING. In a chapter 7
9 liquidation, ^a chapter 12 family farmer's debt
10 adjustment, or ^a chapter 13 individual's debt,
11 adjustment case, a proof of claim ^{must} ~~shall~~ be filed
12 within 90 days after the first date set for the
13 meeting of creditors called ^{under} ~~pursuant to~~ § 341(a) of
14 the Code, except as follows:

15 * * * * *

16 (7) In a chapter 13 individual's debt
17 adjustment case, on motion by a creditor who has
18 not filed a proof of claim within the time herein

Hyphen

FEDERAL RULES OF BANKRUPTCY PROCEDURE 39

19 ~~where prescribed~~ the court for cause shown may ^{on motion}
 20 ~~extend the time for filing~~ ^{allow the} a proof of claim by the ^{of}
 21 creditor ^{where} ~~where the~~ failure to file a timely proof of claim
 22 was the result of excusable neglect.

COMMITTEE NOTE

Subdivision (a) is amended to include ^a secured creditors. A secured claim may not be allowed unless a proof of claim is filed. The amendment also clarifies that the time limits for filing proofs of claim set forth in subdivision (c) apply to both secured and unsecured claims. ~~Notwithstanding this amendment, however, a lien is not void merely because the secured claim is not an allowed secured claim due only to the failure to file a proof of claim. See § 506(d) of the Code.~~

Despite

Ital.

must be disallowed

makes clear

because of

Subdivision (c) is amended to provide that ⁱⁿ a chapter 13 case, the court may extend the time for filing a proof of claim ~~for a creditor who has failed to file a timely proof due to excusable neglect.~~ This revision is designed to give the court discretion to ~~treat as timely filed an otherwise late proof of claim that is~~ filed by a creditor who has not been listed or scheduled and who had no knowledge of the case in time to file a timely proof of claim.

by

is because of excusable neglect

from

accept a

a Rule 3009. Declaration and Payment of Dividends in Chapter 7 Liquidation Cases

- 1 In ^a chapter 7 cases, dividends to creditors
- 2 ~~shall~~ ^{must} be paid as promptly as practicable ~~in the~~
- 3 ~~amounts and at the times as ordered by the court.~~
- 4 Dividend checks ~~shall~~ ^{must} be made payable ^{to} and mailed to

40 FEDERAL RULES OF BANKRUPTCY PROCEDURE

5 each creditor whose claim has been allowed, unless *the creditor*
 6 *has executed and filed under Rule 9010,*
 7 a power of attorney authorizing another entity to
 8 receive dividends, ~~has been executed and filed in~~
 9 accordance with Rule 9010. In that event, dividend
 10 checks ~~shall~~ ^{must} be made payable to the creditor and to
 11 the other entity and ~~shall~~ ^{must} be mailed to the other
 12 entity.

COMMITTEE NOTE

This rule is amended to delete the requirement that the court approve the amounts and times of distributions in chapter 7 cases. This change recognizes the role of the United States trustee in supervising trustees.

a Rule 3015. **a** Filing, Confirmation, and Modification of Plan in Chapter 12 Family Farmer's Debt-Adjustment and Chapter 13 Individual's Debt-Adjustment Cases **Hyphen**
or **Hyphen**

de

1 (a) CHAPTER 12 PLAN. The debtor may file a
 2 chapter 12 plan with the petition. *A debtor who does not*
 3 ~~not filed with the petition, it shall be~~ ^{must} *file the plan*
 4 within the time prescribed by § 1221 of the Code.

de

5 (b) CHAPTER 13 PLAN. The debtor may file a
 6 chapter 13 plan with the petition. *A debtor who does not*
 7 ~~not filed with the petition, it shall be~~ ^{must} *file the plan*
 8 within 15 days ^{The} ~~thereafter, and such~~ ^{may} *time shall not*

of filing the petition

FEDERAL RULES OF BANKRUPTCY PROCEDURE 41

9 be further extended except for cause shown and on
 10 notice as the court may direct. If a case is
 11 converted to chapter 13, a plan ^{must} be filed
 12 within 15 days ^(after entry of the conversion order) thereof, and even time shall not
 13 be further extended except for cause shown and on
 14 notice as the court ~~may~~ direct.

15 (c) DATING. Every proposed plan and any
 16 modification thereof ~~shall~~ ^{must} be dated.

17 (d) NOTICE AND COPIES. The plan or a summary
 18 of the plan ~~shall~~ ^{must} be included with each notice of
 19 ~~the~~ hearing on confirmation mailed ~~pursuant to Rule~~
 20 2002(b). If required by the court, the debtor
 21 shall furnish ~~a sufficient number of copies~~ ^{enough} to
 22 enable the clerk to include a copy of ~~the plan~~ with
 23 the notice of the hearing.

24 (e) ~~TRANSMISSION TO UNITED STATES TRUSTEE.~~ ^{Sending the Plan} The
 25 clerk shall forthwith ~~transmit~~ ^{send} to the United States
 26 trustee a copy of the plan and any modification
 27 thereof filed ~~pursuant to~~ ^{in accordance with} subdivision (a) or (b) of
 28 this rule.

29 (f) ~~OBJECTIONS TO CONFIRMATION.~~ ^(Am) ~~Objections to~~
 30 ~~a~~ ^{the} confirmation of the plan shall be filed and served
 31 on the debtor, the trustee, and any other entity

Line 12 -
 Query: After
 the conversion
 or after entry
 of the conv.
 order?

may
 the

in accordance
 with
 of the plan

(c)

(f)

42 FEDERAL RULES OF BANKRUPTCY PROCEDURE

32 ~~designated by the court, and shall be transmitted~~ *(before confirmation. A copy must be sent)*
 33 ~~to the United States trustee, before confirmation~~
 34 ~~of the plan.~~ An objection to confirmation is
 35 governed by Rule 9014.

36 (g) ^{ying} ~~MODIFICATION OF PLAN AFTER CONFIRMATION.~~

37 A request ^{to modify} ~~for modification~~ of a plan ^{under} ~~pursuant to~~
 38 ~~§ 1229 or § 1329 shall identify~~ ^{of the Code must state} the name of the
 39 ~~proponent and shall~~ ^{must} be filed together with the
 40 proposed modification. The clerk ^{or some other}
 41 ~~person, as the court may direct,~~ ^(designated by) shall give the

The United States trustee,

42 ~~debtor, the trustee, and all creditors not less~~
 43 ~~than 20 days' notice (by mail) of the time fixed for~~
 44 ~~filing objections and if an objection is filed,~~
 45 ~~the hearing to consider the proposed modification,~~
 46 ~~unless the court, ^{may} orders otherwise with respect to~~
 47 ~~creditors who are not affected by the proposed~~
 48 ~~modification. A copy of the notice shall be~~
 49 ~~transmitted to the United States trustee. A copy~~

of the date of a hearing to be held if

50 ~~of the proposed modification, or a summary thereof,~~
 51 ~~shall~~ ^{must} be included with the notice. If required by
 52 ~~the court, the proponent shall furnish a sufficient~~ ^{enough}
 53 ~~number of copies of the proposed modification, or a~~
 54 ~~summary thereof, to enable the clerk to include a~~

FEDERAL RULES OF BANKRUPTCY PROCEDURE 43

55 copy with each notice. ^{Am} objections to the proposed
 56 modification ^{must} shall be filed and served on the
 57 debtor, the trustee, and any other entity
 58 designated by the court, and ^(A copy must) sent be transmitted
 59 to the United States trustee. An objection to a
 60 proposed modification is governed by Rule 9014.

Line 59
 Query: Is there any good reason not to list the U.S. trustee up in line 57?

COMMITTEE NOTE

Subdivision (b) is amended to provide a time limit for filing a plan after a case has been converted to chapter 13.

Subdivision (d) is amended to clarify that the plan or summary of the plan must be included with each notice of the confirmation hearing in chapter 12 cases pursuant to Rule 2002(a). a

as provided in

Subdivision (f) is added to expand the scope of the rule to govern objections to confirmation in chapter 12 and chapter 13 cases. These matters are now governed by Rule 3020.

Subdivision (g) is added to provide a procedure for post-confirmation modification of chapter 12 and chapter 13 plans. These procedures are designed to be similar to the procedures for confirmation of plans. However, if no objection is filed with respect to a proposed modification of a plan after confirmation, the court is not required to hold a hearing. See § 1229(b)(2) and § 1329(b)(2) which provides that the plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved. See § 102(1). The notice of the time fixed for filing objections to the proposed modification should set a date for a hearing to be held in the event that an objection is filed.

to a proposed modification of a confirmed plan

ring a plan.

Hal.

ring

if

44 FEDERAL RULES OF BANKRUPTCY PROCEDURE

a *ring* *ring*
Rule 3018. Acceptance or Rejection of
a Plan in Chapter 9 Municipality and
Chapter 11 Reorganization Cases *et a*

a COMMITTEE NOTE

The title of this rule is amended to indicate that it applies only in chapter 9 and chapter 11 cases. *et a*

a Rule 3019. Modification of Accepted Plan Before
Confirmation in Chapter 9 Municipality and
Chapter 11 Reorganization Cases *et a*

1 In a chapter 9 municipality case or chapter 11
2 reorganization case. After ~~after~~ a plan has been
3 accepted and before its confirmation, the proponent
4 may file a modification ~~of the plan~~ if the court
5 finds after hearing on notice to the trustee, ^{to} any
6 committee appointed under the Code, ^{to} and any other
7 entity designated by the court that the proposed
8 modification does not adversely change the
9 treatment of ~~the claim of~~ any creditor ^{claim} or the
10 ~~interest of~~ any equity security holder ^{in interest} who has not
11 accepted in writing the modification, it shall be
12 deemed accepted by all creditors and equity
13 security holders who have previously accepted the
14 plan.

when neither a creditor nor a security holder having an interest has accepted a modification, the court may order that it be treated as accepted by all creditors and equity security holders who previously accepted the plan if the court finds.

Query:
OK?

FEDERAL RULES OF BANKRUPTCY PROCEDURE 45

COMMITTEE NOTE

This rule is amended to limit its application to chapter 9 and chapter 11 cases. Modification of plans after confirmation in chapter 12 and chapter 13 cases are governed by Rule 3015.

is

Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

a

(a) DEPOSIT. In a chapter 11 case, prior to entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money deposited shall be kept in a special account established for the exclusive purpose of making the distribution.

the court, before

that be deposited

possession of the consideration required by the

must

(k)

(b) OBJECTIONS TO AND HEARING ON CONFIRMATION IN CHAPTER 9 OR CHAPTER 11 CASES.

Am

(1) Objections. Objections to the confirmation of the plan shall be filed and served on the debtor, the trustee, the proponent of the plan, any committee appointed under the Code, and on any other entity designated by the court, within a time fixed by the court. Unless the case is a

the persons within the time fixed by the court; the following

the following

and on

within a

Unless the case is a

17 chapter 9 municipality case, ^(the objecting party must send) a copy of every
 18 objection ~~to confirmation shall be transmitted by~~
 19 ~~the objecting party~~ to the United States trustee
 20 within the time fixed for ~~the~~ filing of
 21 objections. An objection to confirmation is
 22 governed by Rule 9014.

23 (2) Hearing. The court shall rule on
 24 confirmation of the plan after notice and hearing
 25 as provided in Rule 2002. If no ^{timely} objection is
 26 ~~timely~~ filed, the court may ^(without evidence) determine that the plan
 27 has been proposed in good faith and not by any
 28 means forbidden by law, ~~without receiving evidence~~
 29 ~~on such issues.~~

Query:
 We haven't
 changed the
 substance,
 have we?

30 (c) ORDER OF CONFIRMATION. The order of
 31 confirmation ^{must} conform to the appropriate
 32 Official Form and notice of ^{its} entry ~~thereof~~ ^{must} be
 33 mailed promptly as provided in Rule 2002(f) to the ^{following}
 34 ^(persons: the) debtor, the trustee, creditors, equity security
 35 holders, and other parties in interest. Except in
 36 a chapter 9 municipality case, notice of entry of
 37 the ^{confirming} order of confirmation ^{must} be ^{sent} transmitted to
 38 the United States trustee as provided in Rule
 39 2002(k).

line 41 -
QUERY: The
Stys Subcommittee
considers this more
accurate. OK?

FEDERAL RULES OF BANKRUPTCY PROCEDURE 47

40 (d) ~~RETAINED POWER.~~ ^{Even after} ~~Notwithstanding~~ the entry
41 of the ~~order of confirmation,~~ ^{confirming} the court may ~~enter~~
42 ~~any other~~ ^{any other} orders necessary to administer the estate.

authorize the
clerk to

COMMITTEE NOTE

This rule is amended to limit its application to chapter 9 and chapter 11 cases. The procedures relating to confirmation of plans in chapter 12 and chapter 13 cases are provided in Rule 3015.

Rule 5005. ^{Sending} ~~Filing and Transmittal~~ of Papers

1 (a) ~~FILING.~~ ^{Any} ~~The~~ lists, schedules, statements,
2 proofs of claim or interest, complaints, motions,
3 applications, objections, ^{or} other papers required
4 to be filed by these rules, except as provided in
5 28 U.S.C. § 1409, ~~shall~~ ^{must} be filed with the clerk in
6 the district where the case ~~under the Code~~ is
7 pending. The judge of that court may ^{receive} ~~permit the~~
8 papers ^{for filing} ~~to be filed~~ with the judge, in which event
9 the ^{judge must note the} filing date shall be noted thereon and they
10 shall ^{give them forthwith} ~~be forthwith transmitted~~ to the clerk. The
11 clerk ^{may} ~~shall~~ not refuse to accept for filing any
12 petition or other paper ^{submitted} ~~presented~~ for ^{filing} that purpose
13 ~~solely because it is not presented in proper form~~ ^{the}

line 6 -
QUERY:
Is this a
substantive
change? Is
"under the
Code"
necessary?

14 as required by these rules or any local rules or
15 practices.

(c)(e)

COMMITTEE NOTE

of the Federal Rules of Civil Procedure.

Subdivision (a) is amended to conform to the 1991 amendment to Rule 5, F.R.Civ.P. It is ~~not a suitable role~~ for the office of the clerk to refuse to accept for filing papers not conforming to certain requirements of form imposed by these rules or by local rules or practices. The enforcement of these rules and local rules is a role for a judicial officer. A clerk may of course advise a party or counsel that a particular instrument is not in proper form and may be directed to so inform the court.

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Rule 6002. Accounting by Prior Custodian of Property of the Estate

le

1 (b) EXAMINATION OF ADMINISTRATION. On the
2 filing and transmittal of the report and account
3 required by subdivision (a) of this rule and after
4 an examination has been made into the superseded
5 administration, ^{and} after notice and a hearing on
6 notice the court shall determine ^{whether estate was properly administered,} the ~~property of~~
7 ~~the administration~~ including the reasonableness of
8 all disbursements.

FEDERAL RULES OF BANKRUPTCY PROCEDURE 49

COMMITTEE NOTE

Subdivision (b) is amended to conform to the language of § 102(1) of the Code.

Rule 6006. Assumption, Rejection, and Assignment of Executory Contracts and Unexpired Leases

(lc)

(c) HEARING NOTICE. ^{Notice of} ~~When~~ a motion is made ^{under} pursuant to subdivision (a) or (b) of this rule, ^{must} ~~the court shall set a hearing on notice shall be~~ given to the other party to the contract or lease, to other parties in interest as the court may direct, and, except in a chapter 9 municipality case, to the United States trustee.

COMMITTEE NOTE

This rule is amended to delete the requirement for an actual hearing when no request for a hearing is made. See Rule 9014.

Rule 6007. Abandonment or Disposition of Property

(lc)

(a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION; OBJECTIONS; HEARING. Unless otherwise directed by the court, the trustee or debtor in possession shall ^{notify} ~~give notice of a proposed~~

of a proposed abandonment or disposition of property.

50 FEDERAL RULES OF BANKRUPTCY PROCEDURE

5 ~~abandonment or disposition of property to~~ the
6 United States trustee, all creditors, indenture
7 trustees, and committees elected ^{under} pursuant to § 705
8 or appointed ^{under} pursuant to § 1102 of the Code. An
9 ~~objection may be filed and served by~~ a party in
10 interest, ^(may file and serve an objection) within 15 days of the mailing of the
11 notice, or within the time fixed by the court. If
12 a timely objection is made, the court shall set a
13 hearing on notice to the United States trustee and
14 to other entities as the court may direct.

(le)
15 (b) MOTION BY PARTY IN INTEREST. A party in
16 interest may file and serve a motion requiring the
17 trustee or debtor in possession to abandon property
18 of the estate.

19 (c) [abrogated] HEARING. ~~If a timely objection~~
20 ~~is made as prescribed by subdivision (a) of this~~
21 ~~rule, or if a motion is made as prescribed by~~
22 ~~subdivision (b), the court shall set a hearing on~~
23 ~~notice to the United States trustee and to other~~
24 ~~entities as the court may direct.~~

under

FEDERAL RULES OF BANKRUPTCY PROCEDURE 51

COMMITTEE NOTE

This rule is amended to clarify that when a motion is made pursuant to subdivision (b), a hearing may not be required if a hearing is not requested or if there is no opposition to the motion. See Rule 9014.

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Rule 9019. Compromise and Arbitration

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- 1 (a) COMPROMISE. On motion by the trustee and
- 2 after notice and a hearing ~~on notice to~~ , the court
- 3 may approve a compromise or settlement. Notice
- 4 ~~shall~~ ^{must} be given to creditors, the United States
- 5 trustee, the debtor, and indenture trustees as
- 6 provided in Rule 2002 and to ~~each~~ ^{any} other entities ~~as~~
- 7 the court may designate. ~~the court may approve a~~
- 8 ~~compromise or settlement.~~

COMMITTEE NOTE

Subdivision (a) is amended to conform to the language of § 102(1) of the Code.

Rule 9036. Notice by Electronic Transmission

- 1 Whenever the clerk or some other person as
- 2 directed by the court is required to send notice by

52 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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

COMMITTEE NOTE

by phone
 This rule is added to provide flexibility for banks, credit card companies, taxing authorities, and other entities that ordinarily receive notices by mail in a large volume of bankruptcy cases, to arrange to receive by electronic transmission ~~all or part of the information~~ required to be contained in such notices. *any*

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 The use of electronic technology ^{*instead*} ~~in lieu~~ of mail to ~~transmit~~ information to creditors and interested parties will be more convenient and less costly for the sender and the receiver. For example, a bank that ~~receives by~~ *creditors?* mail, at different locations, notices of meetings of ~~creditors pursuant to Rule 2002(a)~~ in thousands of cases each year may prefer to receive only the vital information ordinarily contained in such notices, ~~by~~ *perhaps* electronic transmission to one computer terminal.

When an entity entitled to receive notice by mail requests in writing that notice be given by a designated type of electronic transmission, the court may so order. Notice is complete when

FEDERAL RULES OF BANKRUPTCY PROCEDURE 53

The specific means of transmission must be compatible with technology available to the sender and the receiver. Therefore, electronic transmission of notices is permitted only upon request of the entity entitled to receive the notice, specifying the type of electronic transmission, and only if approved by the court.

Electronic transmission ^{under} ~~puruant to~~ this rule completes the notice requirements. The creditor or interested party is not thereafter entitled to receive the relevant notice by mail.