

TO: Honorable Alicemarie H. Stotler, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable Adrian G. Duplantier, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 11, 1998

RE: Report of the Advisory Committee on Bankruptcy Rules

Introduction

The Advisory Committee on Bankruptcy Rules met on March 26-27, 1998, at the Winrock International Conference Center in Morrilton, Arkansas.¹ The Advisory Committee considered public comments regarding proposed amendments to 16 Bankruptcy Rules that were published in August, 1997, and, after making certain revisions, approved the proposed amendments for presentation to the Standing Committee for final approval and transmission to the Judicial Conference.

The Advisory Committee also approved a preliminary draft of proposed amendments that would substantially revise procedures relating to litigation (other than adversary proceedings) in bankruptcy cases. In addition to complete revisions of Rules 9013 (motions) and 9014 (contested matters), related amendments are proposed for 25 other rules. This "Litigation Package" of proposed amendments will be presented to the Standing Committee at the June 1998 meeting with a request that they be published for comment by the bench and bar. To assist the Standing Committee and the public, the Advisory Committee has prepared an "Introduction" to explain these amendments, which the Committee recommends be published with the proposed amendments.

The Advisory Committee also approved a preliminary draft of proposed amendments to six Bankruptcy Rules and two Official Bankruptcy Forms that are not related to the Litigation Package. The Advisory Committee will also present these proposed amendments to the Standing Committee at its June 1998 meeting with a request that they be published for comment.

The preliminary drafts of proposed amendments that will be presented to the Standing Committee for final approval and transmission to the Judicial Conference, or for publication for comment, are set forth as "Action Items" in this report.

¹Near the Rasputin Mule Farm.

The Standing Committee has requested that the Advisory Committee consider certain questions relating to attorney conduct, local rules, electronic submission of public comments, and the rules promulgation timetable. The Advisory Committee's responses regarding these issues are discussed as "Information Items" in this report.

I. Action Items

- A. Proposed Amendments to Bankruptcy Rules 1017, 1019, 2002, 2003, 3020, 3021, 4001, 4004, 4007, 6004, 6006, 7001, 7004, 7062, 9006, and 9014, Submitted for Final Approval by the Standing Committee and Transmittal to the Judicial Conference.

1. *Public Comment.*

The Preliminary Draft of the Proposed Amendments to the Federal Rules of Bankruptcy Procedure and related committee notes were published for comment by the bench and bar in August 1997.

The public hearing scheduled for January 30, 1998, was canceled for lack of witnesses, but the Advisory Committee received letters from 18 commentators. One commentator, Jack E. Horsley, Esq., of Illinois, commented generally that he favors all the proposed amendments. The other 17 commentators offered specific comments or suggestions relating to one or more of the published amendments. These letters are summarized on a rule-by-rule basis following the text of each rule in the GAP Report (see pages 6-37 below). These comments and recommendations were reviewed at the Advisory Committee meeting in Arkansas and, as a result, several revisions were made to the published draft. These post-publication revisions are identified in the GAP Report.

2. *Synopsis of Proposed Amendments:*

(a) Rule 1017 is amended to specify the parties entitled to notice of a United States trustee's motion to dismiss a voluntary chapter 7 or chapter 13 case based on the debtor's failure to file a list of creditors, schedules, and statement of financial affairs. Currently, all creditors are entitled to

notice of a hearing on the motion if it is a chapter 7 case. To avoid the expense of sending notice to all creditors, the proposed amendments provide that the debtor, the trustee, and any other entities specified by the court, are the only parties entitled to notice. The rule is amended further to provide that a motion to suspend all proceedings in a case or to dismiss a case for substantial abuse of chapter 7 is governed by Rule 9014. Other amendments are stylistic or designed to delete redundant provisions that are covered by other rules.

(b) Rule 1019 is amended (1) to clarify that a motion for an extension of time to file a statement of intention regarding collateral must be filed or made orally before the time expires; (2) to provide that the holder of a postpetition, preconversion administrative expense claim is required to file a request for payment under § 503(a) of the Code, rather than a proof of claim under Rule 3002; (3) to provide that the court may fix a time for filing preconversion administrative expense claims; and (4) to conform the rule to the 1994 amendment to § 502(b)(9) and to the 1996 amendment to Rule 3002(c)(1) regarding the 180-day period for filing a claim of a governmental unit. Other amendments are stylistic.

(c) Rule 2002(a)(4) is amended to delete the requirement that notice of a hearing on dismissal of a chapter 7 case based on the debtor's failure to file required lists, schedules, and statements, must be sent to all creditors. This amendment conforms to the proposed amendments to Rule 1017 which requires that the notice be sent only to certain parties. This subdivision is amended further to delete the requirement that notice of a hearing on dismissal of a case based on the debtor's failure to pay the filing fee must be sent to all creditors. Rule 2002(f) is amended to provide for notice of the suspension of proceedings under § 305 of the Code.

(d) Rule 2003(d) is amended to require the United States trustee to mail a copy of the report of a disputed election for a chapter 7 trustee to any party in interest that has requested a copy of it. Also, the amended rule gives a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve

the dispute. These amendments and other stylistic revisions are designed to conform to the 1997 amendments to Rule 2007.1(b)(3) on the election of a trustee in a chapter 11 case.

(e) Rule 3020(e) is added to automatically stay for ten days an order confirming a chapter 9 or chapter 11 plan so that parties will have sufficient time to request a stay pending appeal.

(f) Rule 3021 is amended to conform to the amendments to Rule 3020 regarding the ten-day stay of an order confirming a plan in a chapter 9 or chapter 11 case. The other amendments are stylistic.

(g) Rule 4001(a)(3) is added to automatically stay for ten days an order granting relief from an automatic stay so that parties will have sufficient time to request a stay pending appeal.

(h) Rule 4004(a) is amended to clarify that the deadline for filing a complaint objecting to discharge under § 727(a) is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. Rule 4004(b) is amended to clarify that a motion for an extension of time for filing a complaint objecting to discharge must be filed before the time has expired. Other amendments are stylistic.

(i) Rule 4007 is amended to clarify that the deadline for filing a complaint to determine dischargeability of a debt under § 523(c) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. This rule is amended further to clarify that a motion for an extension of time for filing a complaint must be filed before the time has expired. Other amendments are stylistic.

(j) Rule 6004(g) is added to automatically stay for ten days an order authorizing the use, sale, or lease of property, other than cash collateral, so that parties will have sufficient time to request a stay pending appeal.

(k) Rule 6006(d) is added to automatically stay for ten days an order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) so

that parties will have sufficient time to request a stay pending appeal.

(l) Rule 7001 is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief when the relief is provided for in a chapter 9, chapter 11, chapter 12, or chapter 13 plan. Other amendments are stylistic.

(m) Rule 7004(e) is amended to provide that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.

(n) Rule 7062 is amended to delete the additional exceptions to Rule 62(a) F.R. Civ. P. The deletion of these exceptions -- which are orders issued in contested matters rather than adversary proceedings -- is consistent with the amendment to Rule 9014 that renders Rule 7062 inapplicable to contested matters. For proposed amendments that provide a new automatic ten-day stay of certain orders, see the amendments to Rules 3020, 3021, 4001, 6004, and 6006.

(o) Rule 9006(b)(2) is amended to conform to the abrogation of Rule 1017(b)(3).

(p) Rule 9014 is amended to delete Rule 7062 from the list of Part VII rules that automatically apply in a contested matter. Rule 7062, which provides that Rule 62 F.R.Civ.P. is applicable in adversary proceedings, is not appropriate for most orders granting or denying motions governed by Rule 9014. For proposed amendments that provide a new automatic ten-day stay of certain orders so that parties will have sufficient time to obtain a stay pending appeal, see the amendments to Rules 3020, 3021, 4001, 6004, and 6006.

3. *Text of Proposed Amendments Presented to the Standing Committee for Approval and Transmission to the Judicial Conference, GAP Report, and Summaries of Public Comments on Published Draft:*

Rule 1017. Dismissal or Conversion of Case; Suspension

1 (a) VOLUNTARY DISMISSAL; DISMISSAL FOR WANT OF
2 PROSECUTION OR OTHER CAUSE. Except as provided in §§ 707(a)(3),
3 707(b), 1208(b), and 1307(b) of the Code, and in Rule 1017(b), (c), and (e),
4 a case shall not be dismissed on motion of the petitioner, ~~or~~ for want of
5 prosecution or other cause, or by consent of the parties, before ~~prior to~~ a
6 hearing on notice as provided in Rule 2002. For ~~such~~ the purpose of the
7 notice, the debtor shall file a list of ~~all~~ creditors with their addresses within
8 the time fixed by the court unless the list was previously filed. If the debtor
9 fails to file the list, the court may order the debtor or another entity to prepare
10 and file it ~~the preparing and filing by the~~
11 ~~debtor or other entity.~~

12 (b) DISMISSAL FOR FAILURE TO PAY FILING FEE.

13 (1) ~~For failure to pay any installment of the filing fee, If~~
14 any installment of the filing fee has not been paid, the court may,
15 after a hearing on notice to the debtor and the trustee, dismiss the
16 case.

17 (2) If the case is dismissed or ~~the case~~ closed without full
18 payment of the filing fee, the installments collected shall be

19 distributed in the same manner and proportions as if the filing fee had
20 been paid in full.

21 ~~(3) Notice of dismissal for failure to pay the filing fee~~
22 ~~shall be given within 30 days after the dismissal to creditors~~
23 ~~appearing on the list of creditors and to those who have filed claims,~~
24 ~~in the manner provided in Rule 2002.~~

25 (c) DISMISSAL OF VOLUNTARY CHAPTER 7 OR CHAPTER
26 13 CASE FOR FAILURE TO TIMELY FILE LIST OF CREDITORS,
27 SCHEDULES, AND STATEMENT OF FINANCIAL AFFAIRS. The court
28 may dismiss a voluntary chapter 7 or chapter 13 case under
29 § 707(a)(3) or § 1307(c)(9) after a hearing on notice served by the United
30 States trustee on the debtor, the trustee, and any other entities as the court
31 directs.

32 ~~(e) (d) SUSPENSION. The court shall not dismiss a case or suspend~~
33 ~~proceedings under § 305 before A case shall not be dismissed or proceedings~~
34 ~~suspended pursuant to § 305 of the Code prior to a hearing on notice as~~
35 ~~provided in Rule 2002(a).~~

36 ~~(d) PROCEDURE FOR DISMISSAL OR CONVERSION. A~~
37 ~~proceeding to dismiss a case or convert a case to another chapter, except~~
38 ~~pursuant to §§706(a), 707(b), 1112(a), 1208(a) or (b), or 1307(a) or (b) of the~~
39 ~~Code, is governed by Rule 9014. Conversion or dismissal pursuant to~~
40 ~~§§706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and served~~

41 ~~as required by Rule 9013. A chapter 12 or chapter 13 case shall be converted~~
42 ~~without court order on the filing by the debtor of a notice of conversion~~
43 ~~pursuant to §§1208(a) or 1307(a), and the filing date of the notice shall be~~
44 ~~deemed the date of the conversion order for the purposes of applying §348(e)~~
45 ~~of the Code and Rule 1019. The clerk shall forthwith transmit to the United~~
46 ~~States trustee a copy of the notice.~~

47 (e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S CHAPTER
48 7 CASE FOR SUBSTANTIAL ABUSE. The court may dismiss an An
49 individual debtor's case ~~may be dismissed~~ for substantial abuse ~~pursuant to~~
50 under § 707(b) only on motion by the United States trustee or on the court's
51 own motion and after a hearing on notice to the debtor, the trustee, the United
52 States trustee, and ~~such any other parties in interest entities~~ as the court
53 directs.

54 (1) A motion to dismiss a case for substantial abuse may
55 be filed by the United States trustee ~~shall be filed no later than only~~
56 within 60 days following after the first date set for the meeting of
57 creditors held pursuant to under § 341(a), unless, before the such time
58 has expired, the court for cause extends the time for filing the motion.
59 ~~The motion shall advise the debtor of~~ The United States trustee shall
60 set forth in the motion all matters to be submitted to the court for its
61 consideration at the hearing.

62 (2) If the hearing is set on the court's own motion, notice

63 ~~thereof of the hearing~~ shall be served on the debtor ~~not no~~ later than
64 60 days ~~following after~~ the first date set for the meeting of creditors
65 pursuant to ~~under~~ § 341(a). The notice shall ~~advise the debtor of~~ ~~set~~
66 ~~forth~~ all matters to be considered by the court at the hearing.

67 (f) PROCEDURE FOR DISMISSAL, CONVERSION, OR
68 SUSPENSION.

69 (1) Rule 9014 governs a proceeding to dismiss or suspend
70 a case, or to convert a case to another chapter, except under §§706(a),
71 1112(a), 1208(a) or (b), or 1307(a) or (b).

72 (2) Conversion or dismissal under
73 §§706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and
74 served as required by Rule 9013.

75 (3) A chapter 12 or chapter 13 case shall be converted
76 without court order when the debtor files a notice of conversion under
77 §§1208(a) or 1307(a). The filing date of the notice becomes the date
78 of the conversion order for the purposes of applying §348(c) and Rule
79 1019. The clerk shall promptly transmit a copy of the notice to the
80 United States trustee.

COMMITTEE NOTE

Subdivision (b)(3), which provides that notice of dismissal for failure to pay the filing fee shall be sent to all creditors within 30 days after the dismissal, is deleted as unnecessary. Rule 2002(f) provides for notice to creditors of the dismissal of a case.

Rule 2002(a) and this rule currently require notice to all creditors of a hearing on dismissal of a voluntary chapter 7 case for the debtor's failure to file a list of creditors, schedules, and statement of financial affairs within the time provided in § 707(a)(3) of the Code. A new subdivision (c) is added to provide that the United States trustee, who is the only entity with standing to file a motion to dismiss under § 707(a)(3) or § 1307(c)(9), is required to serve the motion on only the debtor, the trustee, and any other entities as the court directs. This amendment, and the amendment to Rule 2002, will have the effect of avoiding the expense of sending notices of the motion to all creditors in a chapter 7 case.

New subdivision (f) is the same as current subdivision (d), except that it provides that a motion to suspend all proceedings in a case or to dismiss a case for substantial abuse of chapter 7 under § 707(b) is governed by Rule 9014.

Other amendments to this rule are stylistic or for clarification.

Public Comment on Rule 1017:

(1) Prof. Michael Anthony Sabino of St. John's University College of Business Administration, New York, opposes the amendments to Rule 1017(c). He believes that creditors should receive notice of a motion to dismiss the case for failure to file lists, schedules, or statements because creditors have knowledge regarding the debtor's intentions, good or bad faith, and reasons for the failure to file these documents, and they should be able to furnish the court with this information.

(2) New Jersey Bar Association, Bankruptcy Law Section, opposes the amendments to Rule 1017(c) because it believes that the amendment eliminates notice to creditors of the dismissal of the case based on the failure to file lists, schedules, and statements, and it is important for creditors to have this information so that they do not unnecessarily spend funds to move for other relief in the case.

(3) Wade H. Logan, III, Esq., of South Carolina, commenting as a member of the American College of Trial Lawyers, is in favor of the proposed amendments in that they provide "greater specificity in setting forth the identity of the parties entitled to notice of a motion to dismiss" for failing to file the list of creditors, schedules, or statement of financial affairs. But he suggests that notice also be given to any party that files a notice of appearance in the case.

(4) Litigation Committee, Bar Association of the District of Columbia, commented that the amendment that eliminates the need to give all creditors notice of a motion to dismiss for failure to file schedules is appropriate and will save unnecessary costs. But they disagree with the deletion of Rule 1017(b)(3), which requires the clerk to

12 ~~made during a hearing, motion made~~ before the time has
13 expired. Notice of an extension shall be given to the United
14 States trustee and to any committee, trustee, or other party as
15 the court may direct.

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17 (6) ~~FILING~~ — ~~OF~~ POSTPETITION CLAIMS;
18 PRECONVERSION ADMINISTRATIVE EXPENSES; NOTICE.
19 A request for payment of an administrative expense incurred before
20 conversion of the case is timely filed under § 503(a) of the Code if it
21 is filed before conversion or a time fixed by the court. If the request
22 is filed by a governmental unit, it is timely if it is filed before
23 conversion or within the later of a time fixed by the court or 180 days
24 after the date of the conversion. A claim of a kind specified in § 348(d)
25 may be filed in accordance with Rules 3001(a)-(d) and 3002. On
26 Upon the filing of the schedule of unpaid debts incurred after
27 commencement of the case and before conversion, the clerk, or some
28 other person as the court may direct, shall give notice to those entities
29 listed on the schedule of the time for filing a request for payment of
30 an administrative expense and, unless a notice of insufficient assets
31 to pay a dividend is mailed in accordance with Rule 2002(e), the time
32 for filing a claim of a kind specified in § 348(d), notice to those
33 entities, including the United States, any state, or any subdivision

34 thereof, that their claims may be filed pursuant to Rules 3001(a)-(d)
35 and 3002. Unless a notice of insufficient assets to pay a dividend is
36 mailed pursuant to Rule 2002(c), the court shall fix the time for filing
37 claims arising from the rejection of executory contracts or
38 unexpired leases under §§ 348(c) and 365(d) of the Code.

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COMMITTEE NOTE

Paragraph (1)(B) is amended to clarify that a motion for an extension of time to file a statement of intention must be made by written motion filed before the time expires, or by oral request made at a hearing before the time expires.

Subdivision (6) is amended to provide that a holder of an administrative expense claim incurred after the commencement of the case, but before conversion to chapter 7, is required to file a request for payment under § 503(a) within a time fixed by the court, rather than a proof of claim under § 501 and Rules 3001(a)-(d) and 3002. The 180-day period applicable to governmental units is intended to conform to § 502(b)(9) of the Code and Rule 3002(c)(1). It is unnecessary for the court to fix a time for filing requests for payment if it appears that there are not sufficient assets to pay preconversion administrative expenses. If a time for filing a request for payment of an administrative expense is fixed by the court, it may be enlarged as provided in Rule 9006(b). If an administrative expense claimant fails to timely file the request, it may be tardily filed under § 503(a) if permitted by the court for cause.

The final sentence of Rule 1019(6) is deleted because it is unnecessary in view of the other amendments to this paragraph. If a party has entered into a postpetition contract or lease with the trustee or debtor that constitutes an administrative expense, a timely request for payment must be filed in accordance with this paragraph and § 503(b) of the Code. The time for filing a proof of claim in connection with the rejection of any other executory contract or unexpired lease is governed by Rule 3002(c)(4).

The phrase "including the United States, any state, or any subdivision thereof" is deleted as unnecessary. Other amendments to this rule are stylistic.

Public Comment on Rule 1019.

(1) Association of the Bar of the District of Columbia, Litigation Committee, supports the amendment to Rule 1019(1)(b) in that it clarifies that a request to extend the time to file a statement of intention may be made orally at a hearing.

(2) James Gadsden, Esq., of New York, opposes the proposed amendment to Rule 1019(6) (regarding requests for payment of preconversion administrative expenses) and suggests that the “present procedure of permitting the filing of a proof of claim should be continued, at least for entities making claims for ordinary course of business expenses.” He comments that requiring a claimant to file a request for payment places a substantial additional burden on the claimant because the claimant will have to prepare a more elaborate pleading and file a motion requesting payment. Also, parties are unlikely at that time to be able to determine the likelihood of a distribution with respect to preconversion administrative expense claims.

(3) Litigation Committee, Bar Association of the District of Columbia, opposes the amendment to Rule 1019(6). First, holders of small claims will not hire lawyers to file motions. Second, court dockets will be burdened by large numbers of motions seeking allowance of claims. Forcing claimants to file motions to establish priority is contrary to current practice, and is an “inefficient, burdensome and costly procedure upon both the Court and the creditors.”

(4) Karen Cordry, Esq., of the District of Columbia, writing on her own behalf and not on behalf of National Association of Attorneys General (to which she is Bankruptcy Counsel), commented on the amendments to Rule 1019(6): (1) the committee note should alert practitioners that the deadline for filing preconversion administrative expense claims is new and did not exist before; (2) the amendment will require administrative expense claimants to file requests for payment even in no-asset cases; (3) why is there a need to have a bar date for preconversion administrative expense claims separate from a bar date for other administrative expenses set at the end of the case. “That said, I agree that it would be appropriate to provide a minimum period for filing of any expense request that should not be shorter than the time periods allotted deadline for filing a claim. The most appropriate deadline for such claims would be calculated from the confirmation date; however, it could be left up to the court to set an earlier date in special circumstances.”

(5) New Jersey Bar Association, Bankruptcy Law Section, suggests that the proposed amendments to Rule 1019(6) be modified to provide that the 90-day deadline for filing administrative expense claims after conversion of the case shall apply only if the administrative expense claimant received prior notice of the date set for the meeting of creditors.

Gap Report on Rule 1019. The proposed amendments to Rule 1019(6) were changed

to delete the deadline for filing requests for payment of preconversion administrative expenses that would be applicable in all cases, and to provide instead that the court may fix such a deadline. The committee note was revised to clarify that it is not necessary for the court to fix a deadline where there are insufficient assets to pay preconversion administrative expenses.

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

1 (a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST.

2 Except as provided in subdivisions (h), (i), and (l) of this rule, the clerk, or
3 some other person as the court may direct, shall give the debtor, the trustee,
4 all creditors and indenture trustees at least 20 days' notice by mail of:

5 (1) the meeting of creditors under § 341 or
6 § 1104(b) of the Code;

7 * * * * *

8 (4) in a chapter 7 liquidation, a chapter 11 reorganization
9 case, or and a chapter 12 family farmer debt adjustment case, the
10 hearing on the dismissal of the case or the conversion of the case to
11 another chapter, unless the hearing is under § 707(a)(3) or
12 § 707(b) of the Code or is on dismissal of the case for failure to pay
13 the filing fee, or the conversion of the case to another chapter;

14 * * * * *

15 (f) OTHER NOTICES. Except as provided in subdivision (l) of
16 this rule, the clerk, or some other person as the court may direct, shall give
17 the debtor, all creditors, and indenture trustees notice by mail of:

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(2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under § 305;

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COMMITTEE NOTE

Paragraph (a)(4) is amended to conform to the amendments to Rule 1017. If the United States trustee files a motion to dismiss a case for the debtor's failure to file the list of creditors, schedules, or the statement of financial affairs within the time specified in § 707(a)(3), the amendments to this rule and to Rule 1017 eliminate the requirement that all creditors receive notice of the hearing.

Paragraph (a)(4) is amended further to conform to Rule 1017(b), which requires that notice of the hearing on dismissal of a case for failure to pay the filing fee be served on only the debtor and the trustee.

Paragraph (f)(2) is amended to provide for notice of the suspension of proceedings under § 305.

Public Comment on Rule 2002. The proposed amendments to Rule 2002(a)(4) and Rule 1017(c) would eliminate notice to all creditors of a motion to dismiss for failure to file lists, schedules, or statements. Six letters were received commenting on these amendments. See "Public Comment to Rule 1017" above.

Gap Report on Rule 2002. No changes since publication.

Rule 2003. Meeting of Creditors or Equity Security Holders

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(d) REPORT OF ELECTION AND RESOLUTION OF DISPUTES IN A CHAPTER 7 CASE TO THE COURT.

(1) Report of Undisputed Election. In a chapter 7 case, if the election of a trustee or a member of a creditors' committee is not

6 disputed, the United States trustee shall promptly file a report of the
7 election, including the name and address of the person or entity
8 elected and a statement that the election is undisputed.

9 (2) *Disputed Election.* If the election is disputed, the United
10 States trustee shall promptly file a report stating that the election is
11 disputed, informing the court of the nature of the dispute, and listing
12 the name and address of any candidate elected under any alternative
13 presented by the dispute. No later than the date on which the report
14 is filed, the United States trustee shall mail a copy of the report to any
15 party in interest that has made a request to receive a copy of the
16 report. The presiding officer shall transmit to the court the name and
17 address of any person elected trustee or entity elected a member of a
18 creditors' committee. If an election is disputed, the presiding officer
19 shall promptly inform the court in writing that a dispute exists.
20 Pending disposition by the court of a disputed election for trustee, the
21 interim trustee shall continue in office. If no motion for the
22 resolution of such election dispute is made to the court within 10 days
23 after the date of the creditors' meeting, Unless a motion for the
24 resolution of the dispute is filed no later than 10 days after the United
25 States trustee files a report of a disputed election for trustee, the
26 interim trustee shall serve as trustee in the case.

27 * * * * *

COMMITTEE NOTE

Subdivision (d) is amended to require the United States trustee to mail a copy of a report of a disputed election to any party in interest that has requested a copy of it. Also, if the election is for a trustee, the rule as amended will give a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute.

The substitution of "United States trustee" for "presiding officer" is stylistic. Section 341(a) of the Code provides that the United States trustee shall preside at the meeting of creditors. Other amendments are designed to conform to the style of Rule 2007.1(b)(3) regarding the election of a trustee in a chapter 11 case.

Public Comment on Rule 2003.

- (1) State Bar of California, Federal Courts Committee, supports the proposed amendments to Rule 2003(d).
- (2) Association of the Bar of the District of Columbia, Litigation Committee, supports the amendment as providing "a more functional procedure to resolve disputed elections."

Gap Report on Rule 2003. No changes since publication.

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

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(e) STAY OF CONFIRMATION ORDER. An order confirming a plan is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

COMMITTEE NOTE

Subdivision (e) is added to provide sufficient time for a party to request a stay pending appeal of an order confirming a plan under chapter 9 or chapter 11 of the Code before the plan is implemented and an appeal becomes moot. Unless the court orders otherwise, any transfer of assets, issuance of securities, and cash distributions

provided for in the plan may not be made before the expiration of the 10-day period. The stay of the confirmation order under subdivision (e) does not affect the time for filing a notice of appeal from the confirmation order in accordance with Rule 8002.

The court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately. Alternatively, the court may order that the stay under Rule 3020(e) is for a fixed period less than 10 days.

Public Comment on Rule 3020.

(1) George C. Webster II, Esq., of California, wrote in support of this amendment. It will add a 10-day stay to Rule 3020 that will have the effect of "leveling the playing field by reducing the prospect of mooting by ambush...."

(2) William E. Shmidheiser, III, Esq., of Virginia, opposes the addition of the 10-day stay to Rule 3020. It would represent a fundamental shift in the way business is conducted in bankruptcy cases, slowing down the already slow pace of business and probably killing many otherwise barely-viable deals.

(3) Hon. Poly S. Higdon, Chief Bankruptcy Judge (D. Ore.), wrote that the bankruptcy judges in Oregon oppose the addition of the 10-day stay in Rule 3020. This area is often time sensitive. Judge Higdon recognizes that the court could order that the 10-day stay not apply, but notes that the court or the parties may forget to put that in the order. Acknowledging that Rule 7062 is ambiguous with respect to its application to orders in contested matters, Judge Higdon suggests that this problem can be cured simply by amending Rule 7062 and 9014 to delete the application of Rule 7062 in contested matters.

(4) Wade H. Logan, Esq., of South Carolina, opposes the addition of the 10-day stay in Rule 3020 to permit an opportunity to appeal. "This issue has not proven a problem in our district... [T]his requirement would simply add to what can often be a very time-consuming process inherent in the Bankruptcy system and is not justified."

(5) Litigation Committee, Bar Association of the District of Columbia, supports the 10-day stay added to the rule. These matters "involve a significant effect on the estate and its creditors which should be automatically stayed to provide time to perfect an appeal and obtain a stay pending appeal." Since the court would have discretion to impose or modify the stay, parties should not be prejudiced under the amended rules.

(6) New Jersey Bar Association, Bankruptcy Law Section, suggests that the new 10-day stay be modified to 3 days. Although they agree with the concept embodied in these amendments, severe economic or other prejudice could result from a 10-day

stay of these types of orders. Competing interests addressed in these proposed amendments can best be served by reducing 10 days to 3 days, which will be “sufficient in the vast majority of cases to afford an aggrieved party the opportunity to apply for a stay pending appeal and will insure that the other parties to the order are not unduly prejudiced.”

Gap Report on Rule 3020. No changes since publication.

Rule 3021. Distribution Under Plan

1 Except as provided in Rule 3020(e), After confirmation of a plan after a plan
2 is confirmed, distribution shall be made to creditors whose claims have been allowed,
3 to interest holders whose interests have not been disallowed, and to indenture trustees
4 who have filed claims pursuant to under Rule 3003(c)(5) that have been allowed. For
5 ~~the purpose~~ purposes of this rule, creditors include holders of bonds, debentures,
6 notes, and other debt securities, and interest holders include the holders of stock and
7 other equity securities, of record at the time of commencement of distribution, unless
8 a different time is fixed by the plan or the order confirming the plan.

COMMITTEE NOTE

This amendment is to conform to the amendments to Rule 3020 regarding the ten-day stay of an order confirming a plan in a chapter 9 or chapter 11 case. The other amendments are stylistic.

Public Comment on Rule 3021. This amendment merely conforms to the amendments to Rule 3020. See “Public Comment to Rule 3020.”

Gap Report on Rule 3021. No changes since publication.

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use,

bankruptcy cases, slowing down the already slow pace of business and probably killing many otherwise barely-viable deals.

(3) Hon. Poly S. Higdon, Chief Bankruptcy Judge (D. Ore.), wrote that the bankruptcy judges in Oregon oppose the addition of the 10-day stay in Rule 4001(a). This area is often time sensitive. Judge Higdon recognizes that the court could order that the 10-day stay not apply, but notes that the court or the parties may forget to put that in the order.

(4) Wade H. Logan, Esq., of South Carolina, opposes the addition of the 10-day stay in Rule 4001(a) to permit an opportunity to appeal. "This issue has not proven a problem in our district... [T]his requirement would simply add to what can often be a very time-consuming process inherent in the Bankruptcy system and is not justified."

(5) Litigation Committee, Bar Association of the District of Columbia, supports the 10-day stay added to the rule. These matters "involve a significant effect on the estate and its creditors which should be automatically stayed to provide time to perfect an appeal and obtain a stay pending appeal." Since the court would have discretion to impose or modify the stay, parties should not be prejudiced under the amended rules.

(6) New Jersey Bar Association, Bankruptcy Law Section, suggests that the new 10-day stay be modified to 3 days. Although they agree with the concept embodied in these amendments, severe economic or other prejudice could result from a 10-day stay of these types of orders. Competing interests addressed in these proposed amendments can best be served by reducing 10 days to 3 days, which will be "sufficient in the vast majority of cases to afford an aggrieved party the opportunity to apply for a stay pending appeal and will insure that the other parties to the order are not unduly prejudiced."

(7) Hon. David N. Naugle, Bankruptcy Judge (C.D. Cal.), wrote that the proposed 10-day stay of orders granting relief from the automatic stay in foreclosure and unlawful detainers will vastly increase the number of cases filed and the misuse of the automatic stay.

(8) Hon. Leslie Tchaikovsky, Bankruptcy Judge (N.D. Cal.), opposes the proposed amendment to Rule 4001(a). "It would prejudice many to benefit only a few." In most cases, "each day of delay represents a quantifiable dollar loss to the creditor." Debtors do not often appeal such orders; "more often, they file a new bankruptcy case, thereby invoking a new automatic stay". When a debtor wishes to appeal, he or she may request a stay pending appeal.

(9) Arthur L. Rolston, Esq., of California, suggests that the new 10-day stays that will

be added to Rules 4001(a) apply to matters that are actually contested. If the matter is uncontested, the order should be effective immediately unless the court orders otherwise.

(10) Eugene E. Derryberry, Esq., of Virginia, opposes the proposed amendment to Rule 4001(a). Creditors file relief from stay motions only when the debtor is in serious default, and usually a consent order is entered without a hearing. In many cases in which an agreed order cannot be obtained, "the debtor has been engaged in delaying tactics such as serial filings without ever proposing a Chapter 13 plan or making any payments...." The proposed amendment "grants an unreasonable delay to debtors who do not need or deserve such protection." He lists factors that the Committee should consider: (1) competent counsel for the debtor could obtain a stay pending appeal when appropriate; (2) the proposed rule is "in effect *ex parte*" with none of the showings usually made in considering stays; (3) the proposed rule "unfairly tilts the playing field against secured creditors" in favor of "bad faith filers;" (4) the imposition of sanctions for frivolous appeals "is an illusory deterrent seldom obtainable;" and (5) "the stay of a consent or agreed order is manifestly inappropriate."

(11) Prof. Anthony Michael Sabino of St. John's University College of Business Administration, New York, opposes the proposed amendment to Rule 4001(a)(3). A mandatory stay would "work exclusively to the significant harm of innocent creditors, would be of no value to the vast majority of debtors who do not appeal, and would be of inconsequential benefit to debtors who do appeal stay relief motions." These new 10-day stays will be a burden overly harmful to the bankruptcy system.

(12) State Bar of California, Federal Courts Committee, opposes the amendment. There is no justification for shifting the post-order burden. "[A]ll the proposed amendments do is to transfer the burden of requesting post-ruling relief from the losing party to the prevailing party. This shift is not wanted, warranted, or desirable.

(13) State Bar of California, Business Law Section, does not oppose the amendment, but commented that the language in proposed Rule 4001(a)(3) "unless the court orders otherwise" could cause confusion, and suggests that imposition of the stay should be "the rule" which should not be changed unless an extremely high standard (i.e., irreparable harm) is met, and urges the Advisory Committee to clarify in the committee notes that, absent exigent circumstances, judges should not have discretion to potentially moot an appeal to "get the deal done." Also, the committee note should state that the court may reduce the ten-day period, but may not extend it (except perhaps for extraordinary cause).

Gap Report on Rule 4001. No changes since publication.

applying these rules. See, e.g., *In re Coggin*, 30 F.3d 1443 (11th Cir. 1994). As amended, this rule requires that a motion for an extension of time for filing a complaint objecting to discharge be *filed* before the time has expired.

Other amendments to this rule are stylistic.

Public Comment on Rule 4004.

(1) William E. Shmidheiser, III, Esq., of Virginia, opposes the proposed amendments providing that the 60-day deadlines in Rules 4004 and 4007 run from the first date scheduled for the meeting of creditors. He suggests that these 60-day periods start from the date on which the meeting is actually held. Creditors often use the meeting of creditors to weigh whether or not they want to file a complaint under these rules. "Often what appear to be suspicious circumstances turn out to be easily explained or clarified by the debtor" at the meeting, persuading the creditor not to pursue the matter further. The proposed amendment might lead to more complaints for exception to discharge being filed.

(2) Wade H. Logan, III, of South Carolina, commented that amendments to Rules 4004 and 4007 to require a motion for an extension of time to be *filed* before the time expires are "well reasoned," but that they present an excellent opportunity to set forth further guidance on the effect of the expiration of the time before the hearing on the extension motion.

(3) Association of the Bar of the District of Columbia, Litigation Committee, wrote that the amendments to Rules 4004 and 4007 are appropriate and that they "address confusion under the current rules, especially where the initial meeting is not held on the scheduled date."

(4) State Bar of California, Federal Courts Committee, supports the proposed amendments to Rules 4004 and 4007.

(5) State Bar of California, Business Law Section, supports the proposed amendments to Rule 4007(c) and (d).

Gap Report on Rule 4004. No changes since publication.

Rule 4007. Determination of Dischargeability of a Debt

* * * * *

1 (c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A

2 CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, OR
3 ~~AND~~ CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASES
4 CASE; NOTICE OF TIME FIXED. A complaint to determine the
5 dischargeability of ~~any a~~ debt pursuant to under § 523(c) of the Code shall be
6 filed ~~not no~~ later than 60 days ~~following~~ after the first date set for the meeting
7 of creditors ~~held pursuant to~~ under § 341(a). The court shall give all creditors
8 ~~not no~~ less than 30 ~~days~~ days' notice of the time so fixed in the manner
9 provided in Rule 2002. On motion of ~~any a~~ party in interest, after hearing on
10 notice, the court may for cause extend the time fixed under this subdivision.
11 The motion shall be ~~made~~ filed before the time has expired.

12 (d) TIME FOR FILING COMPLAINT UNDER § 523(c) IN
13 A CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE ~~CASES~~;
14 NOTICE OF TIME FIXED. On motion by a debtor for a discharge under §
15 1328(b), the court shall enter an order fixing ~~a time for the filing of the time~~
16 to file a complaint to determine the dischargeability of any debt pursuant to
17 under § 523(c) and shall give ~~not no~~ less than 30 ~~days~~ days' notice of the time
18 fixed to all creditors in the manner provided in Rule 2002. On motion of any
19 party in interest, after hearing on notice, the court may for cause extend the
20 time fixed under this subdivision. The motion shall be ~~made~~ filed before the
21 time has expired.

22 * * * * *

COMMITTEE NOTE

Subdivision (c) is amended to clarify that the deadline for filing a complaint to determine the dischargeability of a debt under § 523(c) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. The time for filing the complaint is not affected by any delay in the commencement or conclusion of the meeting of creditors. This amendment does not affect the right of any party in interest to file a motion for an extension of time to file a complaint to determine the dischargeability of a debt in accordance with this rule.

The substitution of the word "filed" for "made" in the final sentences of subdivisions (c) and (d) is intended to avoid confusion regarding the time when a motion is "made" for the purpose of applying these rules. *See, e.g., In re Coggin*, 30 F.3d 1443 (11th Cir. 1994). As amended, these subdivisions require that a motion for an extension of time be *filed* before the time has expired.

The other amendments to this rule are stylistic.

Public Comment on Rule 4007. The proposed amendments to Rules 4004 and 4007 are similar. Five letters were received commenting on the proposed amendments to both of these rules. See "Public Comment on Rule 4004" above.

Gap Report on Rule 4007. No changes since publication, except for stylistic changes in the heading of Rule 4007(d).

Rule 6004. Use, Sale, or Lease of Property

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(g) STAY OF ORDER AUTHORIZING USE, SALE, OR LEASE
OF PROPERTY. An order authorizing the use, sale, or lease of property
other than cash collateral is stayed until the expiration of 10 days after entry
of the order, unless the court orders otherwise.

COMMITTEE NOTE

Subdivision (g) is added to provide sufficient time for a party to request a stay pending appeal of an order authorizing the use, sale, or lease of property under § 363(b) of the Code before the order is implemented. It does not affect the time for filing a notice of appeal in accordance with Rule 8002.

Rule 6004(g) does not apply to orders regarding the use of cash collateral and does not affect the trustee's right to use, sell, or lease property without a court order to the extent permitted under § 363 of the Code.

The court may, in its discretion, order that Rule 6004(g) is not applicable so that the property may be used, sold, or leased immediately in accordance with the order entered by the court. Alternatively, the court may order that the stay under Rule 6004(g) is for a fixed period less than 10 days.

Public Comment on Rule 6004.

(1) George C. Webster II, Esq., of California, wrote in support of this amendment. It will add a 10-day stay to Rules 6004 and 6006 that will have the effect of “leveling the playing field by reducing the prospect of mooting by ambush....”

(2) William E. Shmidheiser, III, Esq., of Virginia, opposes the addition of the 10-day stay to Rules 6004 and 6006. It would represent a fundamental shift in the way business is conducted in bankruptcy cases, slowing down the already slow pace of business and probably killing many otherwise barely-viable deals.

(3) Hon. Poly S. Higdon, Chief Bankruptcy Judge (D. Ore.), wrote that the bankruptcy judges in Oregon oppose the addition of the 10-day stay in Rules 6004 and 6006. This area is often time sensitive. Judge Higdon recognizes that the court could order that the 10-day stay not apply, but notes that the court or the parties may forget to put that in the order. Acknowledging that Rule 7062 is ambiguous with respect to its application to orders in contested matters, Judge Higdon suggests that this problem can be cured simply by amending Rule 7062 and 9014 to delete the application of Rule 7062 in contested matters.

(4) Wade H. Logan, Esq., of South Carolina, opposes the addition of the 10-day stay in Rules 6004 and 6006 to permit an opportunity to appeal. “This issue has not proven a problem in our district... [T]his requirement would simply add to what can often be a very time-consuming process inherent in the Bankruptcy system and is not justified.”

(5) Litigation Committee, Bar Association of the District of Columbia, supports the 10-day stay added to Rules 6004 and 6006. These matters “involve a significant effect on the estate and its creditors which should be automatically stayed to provide time to perfect an appeal and obtain a stay pending appeal.” Since the court would have discretion to impose or modify the stay, parties should not be prejudiced under the amended rules.

(6) New Jersey Bar Association, Bankruptcy Law Section, suggests that the new 10-day stay in Rules 6004 and 6006 be modified to 3 days. Although they agree with the

concept embodied in these amendments, severe economic or other prejudice could result from a 10-day stay of these types of orders. Competing interests addressed in these proposed amendments can best be served by reducing 10 days to 3 days, which will be "sufficient in the vast majority of cases to afford an aggrieved party the opportunity to apply for a stay pending appeal and will insure that the other parties to the order are not unduly prejudiced."

(7) Prof. Anthony Michael Sabino of St. John's University College of Business Administration, New York, opposes the proposed amendments to Rules 6004 and 6006. These new 10-day stays will be a burden overly harmful to the bankruptcy system.

(8) Arthur L. Rolston, Esq., of California, suggests that the new 10-day stays that will be added to Rules 6004 and 6006 should apply to matters that are actually contested, but not to uncontested matters. If the matter is uncontested, the order should be effective immediately unless the court orders otherwise.

(9) State Bar of California, Federal Courts Committee, opposes all the amendments to Rules 6004 and 6006. There is no justification for shifting the post-order burden. "[A]ll the proposed amendments do is to transfer the burden of requesting post-ruling relief from the losing party to the prevailing party. The California Committee on Federal Courts is of the opinion that such a shift is not wanted, warranted, or desirable."

Gap Report on Rule 6004. No changes since publication.

Rule 6006. Assumption, Rejection and or Assignment of an Executory Contracts and Contract or Unexpired Leases Lease

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(d) STAY OF ORDER AUTHORIZING ASSIGNMENT. An order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

COMMITTEE NOTE

Subdivision (d) is added to provide sufficient time for a party to request a stay

pending appeal of an order authorizing the assignment of an executory contract or unexpired lease under § 365(f) of the Code before the assignment is consummated. The stay under subdivision (d) does not affect the time for filing a notice of appeal in accordance with Rule 8002.

The court may, in its discretion, order that Rule 6006(d) is not applicable so that the executory contract or unexpired lease may be assigned immediately in accordance with the order entered by the court. Alternatively, the court may order that the stay under Rule 6006(d) is for a fixed period less than 10 days.

Public Comment on Rule 6004. Nine letters were received containing the same comments on Rules 6004 and 6006 (both rules are amended to add 10-day stays to certain orders). See "Public Comment on Rule 6004" above. In addition, the State Bar of California, Business Law Section, asked why the current Rule 7062, which was amended in 1991 to make the Rule 7062 ten-day stay inapplicable to §365 orders, is being changed now to impose the ten-day stay on such orders. They also suggest that "entry of order" be defined (is the paper docket accurate in relation to the Pacer docket; is the "entered" stamp on the order always the date it is entered on the paper docket?).

Gap Report on Rule 6004. No changes since publication.

Rule 7001. Scope of Rules of Part VII

1 An adversary proceeding is governed by the rules of this Part VII. ~~It is a~~
2 ~~proceeding~~ The following are adversary proceedings:

3 (1) a proceeding to recover money or property, ~~except other than~~
4 a proceeding to compel the debtor to deliver property to the trustee, or a
5 proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;

6 (2) a proceeding to determine the validity, priority, or extent of a
7 lien or other interest in property, other than a proceeding under Rule
8 4003(d);

9 (3) a proceeding to obtain approval ~~pursuant to~~ under § 363(h)
10 for the sale of both the interest of the estate and of a co-owner in property;

- 11 (4) a proceeding to object to or revoke a discharge;
- 12 (5) a proceeding to revoke an order of confirmation of a chapter
13 11, chapter 12, or chapter 13 plan;
- 14 (6) a proceeding to determine the dischargeability of a debt;
- 15 (7) a proceeding to obtain an injunction or other equitable relief,
16 except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides
17 for the relief;
- 18 (8) a proceeding to subordinate any allowed claim or interest,
19 except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides
20 for subordination is provided in a chapter 9, 11, 12, or 13 plan;
- 21 (9) a proceeding to obtain a declaratory judgment relating to any
22 of the foregoing; or
- 23 (10) a proceeding to determine a claim or cause of action removed
24 pursuant to under 28 U.S.C. § 1452.

COMMITTEE NOTE

This rule is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief that is provided for in a plan under circumstances in which substantive law permits the relief. Other amendments are stylistic.

Public Comment on Rule 7001.

(1) State Bar of California, Federal Courts Committee, supports the proposed amendments to Rule 7001.

(2) Wade H. Logan, III, Esq., of South Carolina, wrote that the proposed amendment to Rule 7001(7) is "well advised."

(3) Francis M. Allegra, Deputy Associate Attorney General of the United States,

wrote that the Department of Justice opposes the proposed amendment to Rule 7001 because it “jeopardizes unjustifiably the rights of those subject to injunctive or other equitable relief.” The procedural safeguards under Civil Rule 65 would be lost. The targets will have their rights weighed in light of the rights of those affected by the plan; a tacit burden shifting can be expected requiring the targets to show effectively that their opposition to the injunctive relief is meritorious enough to overcome the totality of the interests dealt with by the plan. In addition, plans are frequently contracts of adhesion and injunctions included in lengthy plans may not receive proper scrutiny. The federal government would be an appealing target for a debtor seeking protection from a federal creditor or regulator, with a high risk of inadequate notice to affected agencies. Finally, there are barriers to appealing a confirmation order (such as an expensive supersedeas bond for a stay).

(4) Richard H. Walker, General Counsel, Securities and Exchange Commission, wrote that the staff of the SEC opposes the proposed amendments to Rule 7001 because it would impair procedural rights. Injunctions in plans do not carry safeguards present for injunctive relief in an adversary proceeding. “We have reviewed many plans incorporating injunctions that are not prominently displayed and whose effect is not adequately described in disclosure statements.” Also, the plan process does not focus on the rights of any one creditor, but is class oriented, which, together with the absence of certain procedural protections, “would raise serious due process concerns.” And including injunctions in a plan shifts the burden from the debtor to the target of the injunction to object to the plan, under a statutory scheme that does not accord the same weight to his interests as the injunctive criteria.” Also, appealing a confirmation order is onerous. He also wrote that the SEC has seen attempts to extinguish law enforcement claims against directors, officers and affiliates in plans. And the amendment would place the burden on the creditor to come into court and prove why they should not be enjoined.

(5) Prof. Michael Anthony Sabino of St. John’s University College of Business Administration, New York, made several stylistic suggestions.

(6) Bar Association of the District of Columbia, Litigation Committee, wrote that this change would streamline the confirmation process and avoid time consuming ancillary litigation. Although imposition of injunctions without the requisite evidence propounded by the debtor would be highly prejudicial to the affected creditors, injunctive relief is included as plan terms on a routine basis. Therefore, the amendment would be sanctioning current practice in this regard.

Gap Report on Rule 7001. No changes since publication, except for stylistic changes.

Rule 7004. Process, Service of Summons, Complaint

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(e) SUMMONS: TIME LIMIT FOR SERVICE WITHIN THE UNITED STATES. ~~If service is made pursuant to Rule 4(e)-(j)~~ Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F.R.Civ.P. it shall be made by delivery of the summons and complaint within 10 days after the summons is issued following issuance of the summons. If service is made by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days after the summons is issued following issuance of the summons. If a summons is not timely delivered or mailed, another summons shall be issued and served. This subdivision does not apply to service in a foreign country.

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COMMITTEE NOTE

Subdivision (e) is amended so that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.

Public Comment on Rule 7004.

- (1) State Bar of California, Business Law Section, does not oppose the amendment, which “merely seeks to make it clear that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.”
- (2) State Bar of California, Federal Courts Committee, supports the proposed amendments to Rule 7004(e).
- (3) Bar Association of the District of Columbia, Litigation Committee, supports this amendment as a “practical change.”

Gap Report on Rule 7004. No changes since publication.

Rule 7062. Stay of Proceedings to Enforce a Judgment

1 Rule 62 F.R.Civ.P. applies in adversary proceedings. ~~An order~~
2 ~~granting relief from an automatic stay provided by § 362, § 922, § 1201, or~~
3 ~~§ 1301 of the Code, an order authorizing or prohibiting the use of cash~~
4 ~~collateral or the use, sale or lease of property of the estate under § 363, an~~
5 ~~order authorizing the trustee to obtain credit pursuant to § 364, and an order~~
6 ~~authorizing the assumption or assignment of an executory contract or~~
7 ~~unexpired lease pursuant to § 365 shall be additional exceptions to Rule~~
8 62(a).

COMMITTEE NOTE

The additional exceptions to Rule 62(a) consist of orders that are issued in contested matters. These exceptions are deleted from this rule because of the amendment to Rule 9014 that renders this rule inapplicable in contested matters unless the court orders otherwise. *See also* the amendments to Rules 3020, 3021, 4001, 6004, and 6006 that delay the implementation of certain types of orders for a period of ten days unless the court otherwise directs.

Public Comment on Rule 7062.

(1) George C. Webster II, Esq., of California, wrote in support of the amendments to Rule 7062 and 9014, which will render Civil Rule 62(a) inapplicable in contested matters. The amendments will cure the uncertainty that exists under the current Rules regarding the application of Civil Rule 62(a) in bankruptcy.

(2) Hon. Poly S. Higdon, Chief Bankruptcy Judge (D. Ore.), acknowledged that Rule 7062 is ambiguous with respect to its application to orders in contested matters, and agrees that the problem can be cured by amending Rule 7062 and 9014 to delete the application of Rule 7062 in contested matters. But the bankruptcy judges in Oregon oppose the addition of 10-day stays in Rules 3020, 4001(a)(3), 6004, or 6006.

(3) Bar Association of the District of Columbia, Litigation Committee, commented that the proposed amendments to Rules 7062 and 9014 “are appropriate because most orders entered in contested matters are either interlocutory, ministerial or simply too insignificant to the outcome of the case to require the ten day stay” and “many

of these orders should be immediately effective to avoid additional costs to the estate which accrue during the ten day period..."

(4) State Bar of California, Federal Courts Committee, opposes the amendments to Rules 7062 and 9014 (as well as the 10-day stays added to Rules 3020, 4001(a), 6004, and 6006). While not unmindful of the difficulties encountered in applying Rule 7062, "a better remedy would be to extend the scope of [Rule 7062] beyond 'enforcement.'" They believe that the proposed amendments would cause confusion. "No reason is given for changing current practice which, although not trouble free, is at least known and in most circumstances clear and workable."

(5) State Bar of California, Business Law Section, agrees with the proposed amendment to Rules 7062 and 9014 because "the provisions of Rule 62 are frequently not appropriate for orders granting or denying motions." The letter comments that the proposed amendments to Rules 7062 and 9014 "will clarify what has been a consistent source of confusion."

Gap Report on Rule 7062. No changes since publication.

Rule 9006. Time

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2 (b) ENLARGEMENT.

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4 (2) ENLARGEMENT NOT PERMITTED. The court may not
5 enlarge the time for taking action under Rules 1007(d),
6 ~~1017(b)(3)~~, 2003(a) and (d), 7052, 9023, and 9024.

7 *****

COMMITTEE NOTE

Rule 9006(b)(2) is amended to conform to the abrogation of Rule 1017(b)(3).

Public Comment on Rule 9006. None.

Gap Report on Rule 9006. The proposed amendment to Rule 9006(b)(2) has been

added as a technical change to conform to the abrogation of Rule 1017(b)(3). The proposed amendment to Rule 9006(c)(2), providing that the time under Rule 1019(6) to file a request for payment of an administrative expense after a case is converted to chapter 7 could not be reduced by the court, was deleted. The proposed amendments to Rule 1019(6) have been changed so that the court will fix the time for filing the request for payment. Since the court will fix the time limit, the court should have the power to reduce it. See Gap Report to Rule 1019(6).

Rule 9014. Contested Matters

1 In a contested matter in a case under the Code not otherwise governed
2 by these rules, relief shall be requested by motion, and reasonable notice and
3 opportunity for hearing shall be afforded the party against whom relief is
4 sought. No response is required under this rule unless the court orders an
5 answer to a motion. The motion shall be served in the manner provided for
6 service of a summons and complaint by Rule 7004, and, unless the court
7 otherwise directs, the following rules shall apply: 7021, 7025, 7026,
8 7028-7037, 7041, 7042, 7052, 7054-7056, ~~7062~~, 7064, 7069, and 7071. The
9 court may at any stage in a particular matter direct that one or more of the
10 other rules in Part VII shall apply. An entity that desires to perpetuate
11 testimony may proceed in the same manner as provided in Rule 7027 for the
12 taking of a deposition before an adversary proceeding. The clerk shall give
13 notice to the parties of the entry of any order directing that additional rules of
14 Part VII are applicable or that certain of the rules of Part VII are not
15 applicable. The notice shall be given within such time as is necessary to
16 afford the parties a reasonable opportunity to comply with the procedures
17 made applicable by the order.

COMMITTEE NOTE

This rule is amended to delete Rule 7062 from the list of Part VII rules that automatically apply in a contested matter.

Rule 7062 provides that Rule 62 F.R.Civ.P., which governs stays of proceedings to enforce a judgment, is applicable in adversary proceedings. The provisions of Rule 62, including the ten-day automatic stay of the enforcement of a judgment provided by Rule 62(a) and the stay as a matter of right by posting a supersedeas bond provided in Rule 62(d), are not appropriate for most orders granting or denying motions governed by Rule 9014.

Although Rule 7062 will not apply automatically in contested matters, the amended rule permits the court, in its discretion, to order that Rule 7062 apply in a particular matter, and Rule 8005 gives the court discretion to issue a stay or any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. In addition, amendments to Rules 3020, 4001, 6004, and 6006 automatically stay certain types of orders for a period of ten days, unless the court orders otherwise.

Public Comment on Rule 9014. Five letters were received commenting on the proposed amendments to Rules 7062 and 9014, which would render Civil Rule 62 inapplicable in contested matters. See "Public Comment on Rule 7062" above.

Gap Report on Rule 9014. No changes since publication.

B. The "Litigation Package" - Proposed Amendments to Bankruptcy Rules 1006, 1007, 1014, 1017, 2001, 2004, 2007, 2014, 2016, 3001, 3006, 3007, 3012, 3013, 3015, 3019, 3020, 4001, 6004, 6006, 6007, 9006, 9013, 9014, 9017, 9021, and 9034 Submitted for Approval to Publish for Comment.

1. *Introduction to Proposed Amendments.*

The Advisory Committee prepared the following introduction to the proposed amendments relating to litigation in bankruptcy cases, and requests that this introduction be published together with the preliminary draft of proposed amendments.

**Introduction to Preliminary Draft of
Proposed Amendments to the Federal Rules of
Bankruptcy Procedure Relating to
Litigation and Motion Practice**

At the request of the Advisory Committee on Bankruptcy Rules, in 1995 the Federal Judicial Center conducted an extensive survey of bankruptcy judges, lawyers, trustees, clerks and other participants in the bankruptcy system to determine their satisfaction or dissatisfaction with the Federal Rules of Bankruptcy Procedure. The Advisory Committee requested the survey in connection with the work of its Long-Range Planning Subcommittee and for the purpose of identifying areas that are in need of improvement. The survey results indicated general satisfaction with the Rules, but identified motion practice and litigation as areas of significant dissatisfaction.

Part VII of the Rules govern adversary proceedings, which is a form of litigation in bankruptcy court conducted in a manner that is similar to a civil action in district court. For example, an adversary proceeding is commenced by filing a complaint followed by service of a summons. Most Part VII Rules incorporate by reference specific Federal Rules of Civil Procedure. The Advisory Committee believes, and the Federal Judicial Center survey confirms, that the Rules governing adversary proceedings are working well.

But most requests for court orders and litigated disputes in bankruptcy court are not adversary proceedings; they are governed by some form of motion practice unrelated to any adversary proceeding. There has been some confusion and criticism regarding procedures that govern these matters, and these are the troublesome areas identified in the results of the Federal Judicial Center survey.

One significant difference between a typical motion filed in a civil action in the district court and a typical motion filed in bankruptcy court is that the motion in district court relates to a pending lawsuit. For example, a defendant may file a motion to dismiss a complaint or for summary judgment. In contrast, a motion filed in bankruptcy court usually commences new litigation that is unrelated to any pending lawsuit. For example, a creditor may file a motion for the appointment of a trustee in a chapter 11 case or for relief from the automatic stay, or a trustee may file a motion to assume or reject an executory contract. Each of these motions commences litigation by or against specified parties who may not be parties in any pending litigation. Although these motions are made within a bankruptcy case, the bankruptcy case is not, in and of itself, litigation involving a legal dispute in the traditional sense. Under section 301 of the Bankruptcy Code, the mere filing of a voluntary bankruptcy petition constitutes an order for relief.

A serious criticism of the Bankruptcy Rules is that there is a lack of national uniformity and insufficient guidance regarding procedures governing the resolution of these important substantive disputes. Motions relating to a pending adversary proceeding -- such as a motion relating to discovery in an adversary proceeding seeking to recover a preferential payment to a creditor -- may be subject to minor local variation consistent with the flexibility present in district court motion practice. The local variations in procedure addressed by these proposed amendments are of much greater consequence.

Although such motions that are unrelated to pending litigation may involve millions of dollars to the litigants, the current Rules provide little specificity or uniformity as to the procedure governing them. Current Rule 9014 provides that relief is obtained by motion served in the manner provided for service of a summons, that reasonable notice and opportunity to be heard must be afforded, and that a response is not required unless the court orders otherwise. In the absence of a contrary order, certain listed Part VII rules applicable to adversary proceedings -- most relating to discovery or summary judgment -- apply to the motion, and the court may order that other Part VII rules shall apply. Rule 9006(d), which applies to motions generally, provides that, unless the court orders otherwise, at least five days' notice of a hearing must be given and, if the motion is supported by affidavit, the affidavit must be served at least one day before the hearing. These general provisions are often varied or supplemented with greater detail by local rule or court order. The result is that practice varies from district to district or from court to court. The Advisory Committee believes that greater specificity and national uniformity, as well as improvements to the current procedures, are desirable for such motions that are unrelated to any pending litigation.

Another criticism addressed by the Advisory Committee is confusion resulting from terminology used in the Bankruptcy Rules. For example, Rule 9014 governs "contested matters," such as a motion to reject an executory contract or a motion to obtain court approval of a sale of assets. In many instances, "contested matters" are, in fact, uncontested. Other proceedings, such as an "application" for approval of professional fees, are not "contested matters" under the Rules, despite the fact that they are often contested by parties in interest.

The Advisory Committee has spent more than two years studying the Rules relating to litigation in bankruptcy courts and formulating proposed amendments designed to improve procedures for obtaining court orders and resolving disputes. As mentioned above, the Advisory Committee is satisfied that the rules governing adversary proceedings under Part VII are working well. But the Advisory Committee is proposing amendments that would substantially revise other procedures for obtaining court orders unrelated to pending litigation, both for routine administrative matters and for more

complex disputes that require greater procedural safeguards.

The most important and fundamental changes would be made to Rules 9013 (Motions; Form and Service) and 9014 (Contested Matters), although 25 other Rules will have to be revised to conform to the new procedures. In general, the proposed amendments would increase national uniformity and provide more detailed procedural guidance when a party requests relief unrelated to pending litigation; these amendments should reduce substantially the number of local rules.

The highlights of the preliminary draft of the proposed amendments are as follows:

- (1) Rule 9013 would be replaced with a new rule on "applications." This rule would govern specific types of relief in areas that are routine, nonsubstantive, and rarely contested. For example, Rule 9013 would govern the procedure for obtaining a court order to jointly administer two or more cases, or for an order reopening a closed case. The procedures would be streamlined so as to avoid unnecessary costs or delay.
 - * The application and a proposed order would be served on specified entities at any time before, or even at, the time when the application is filed with the court; advance notice is not required.
 - * Although service by first class mail is available, the court by local rule may permit the application and accompanying papers to be served by electronic means.
 - * A response to the application would not be required and the court may order relief without a hearing.
- (2) Rule 9014 would govern motions that are related to the administration of the bankruptcy case or the estate, but are usually unrelated to any other pending litigation. These motions are often contested and may affect significant substantive rights of the parties. For example, a motion asking the court to order the appointment of a trustee in a chapter 11 case, requesting relief from the automatic stay, requesting authorization for a debtor in possession to obtain credit, or seeking an order terminating the exclusive period in which only the debtor may file a plan of reorganization, would be an administrative proceeding governed by Rule 9014. Certain types of proceedings, such as a chapter 11 confirmation hearing governed by Rule 3020, would be expressly excluded from the scope of the rule so

that more appropriate tailor-made procedures could govern. The title of Rule 9014 would be changed from "Contested Matters" to "Administrative Proceedings."

The significant features of an administrative proceeding under the preliminary draft of the proposed amendments to Rule 9014 include the following:

- * The proceeding would be commenced by filing and serving a motion.
- * The rule would specify the papers that must accompany the motion. A proposed order and, unless the movant is a consumer debtor, one or more supporting affidavits must be included. In certain situations, a copy of a valuation report must be included with the motion papers.
- * The motion papers, including notice of the hearing, must be served on specified entities at least 20 days before the hearing date. The court by local rule may permit the papers to be served by electronic means.
- * Interim relief, if appropriate, may be ordered on an expedited basis.
- * A response to the motion may be served and filed, but no later than five days before the scheduled hearing date. If no timely response is filed, the court may rule on the matter without a hearing or may give notice to the movant that a hearing will be held notwithstanding the absence of a response.
- * Discovery methods applicable in adversary proceedings would be available, except that mandatory disclosures required under Civil Rule 26(a)(1)-(3) and the discovery meeting required under Rule 26(f) would not apply. Certain 30-day time periods in the Civil Rules relating to discovery would be reduced to ten days consistent with the expedited nature of administrative proceedings.
- * If a timely response is filed, the court would hold a hearing to determine whether there is a genuine issue as to any material fact and, if not, whether any party is entitled to relief as a matter of law.

Except for certain types of motions or if the parties otherwise consent, no testimony would be taken at the hearing. Therefore, attorneys and unrepresented parties would not have to bring witnesses to the hearing in most situations. If there is no genuine issue as to any material fact, the court may grant the appropriate relief. If the court finds that there is a genuine issue of material fact, the court would conduct a status conference for the purpose of expediting the disposition of the proceeding and scheduling the evidentiary hearing. Alternatively, on reasonable notice to the parties, the court may order that an evidentiary hearing at which witnesses may testify will be held on the originally scheduled hearing date.

- * Rule 43(e) of the Federal Rules of Civil Procedure provides that where a motion is based on facts not appearing of record the court may hear the motion on affidavits presented by the parties. The Advisory Committee believes, however, that the assessment of witness credibility is as important at an evidentiary hearing on an administrative motion as it is at a trial in an adversary proceeding. Accordingly, the proposed amendments to Rule 9014 provide that Civil Rule 43(e) does not apply at an evidentiary hearing on an administrative motion. When there is a genuine issue of material fact, this provision would require that witnesses appear and testify, rather than give testimony by affidavit.
- * To provide flexibility where needed, the court for cause may order that any procedural requirement under Rule 9014 will not apply or will be amended in a particular proceeding. But the requirements of Rule 9014 may not be abrogated by local rule or general order. In accordance with Rule 9006, the court also may extend or reduce any time period set forth in Rule 9014.

It would be desirable to divide all proceedings arising in, or related to, a bankruptcy case into only three categories: applications under Rule 9013, administrative proceedings under Rule 9014, and adversary proceedings under Part VII. But there are some proceedings that do not fit well into any of these three categories. These excluded proceedings, which are listed in the proposed amendments to Rule 9014(a), would be governed by other specified rules.

Although the proposed amendments to Rules 9013 and 9014 would provide greater

guidance and national uniformity, they would not govern motions that are made within a pending adversary proceeding, pending administrative proceeding, or other pending litigation. For example, Rules 9013 and 9014 would not govern a motion dealing with a discovery dispute in an adversary proceeding. Motions that are related to pending litigation in bankruptcy court -- which are similar to typical motions made in a civil action in the district court -- would continue to be guided by other national rules, such as Rule 7007 or 9006, and by local rules and practice.

This preliminary draft of these proposed amendments has not been approved except for the limited purpose of publication for comment. The Advisory Committee is seeking comments and suggestions from the bench and bar regarding all aspects of these proposed amendments, and is especially interested in receiving comments regarding the highlighted provisions mentioned above. All comments, whether favorable, adverse, or otherwise, will be considered by the Advisory Committee, and further revisions to the preliminary draft may be made before the Advisory Committee finally recommends the adoption of amendments to the Bankruptcy Rules relating to litigation and motion practice.

2. *Rule-by-Rule Synopsis of Proposed Amendments*
(*"Litigation Package"*):

Each of the following rules has been amended for stylistic improvement, as well as for substantive changes as described below.

(a) Rule 1006 is amended to provide that a request to pay the filing fee in installments may be granted without notice or a hearing. The procedural requirements for an application under Rule 9013 or for an administrative motion under Rule 9014 are not applicable. Other amendments are for clarification regarding the prohibition on paying fees to an attorney or bankruptcy petition preparer before the filing fee has been paid in full.

(b) Rule 1007(c) is amended to provide that a request for an extension of time to file schedules and statements may be resolved without notice or a hearing. The procedural requirements for an application under Rule 9013 or for an administrative motion under Rule 9014 are not applicable.

(c) Rule 1014 is amended to conform to the proposed amendments to Rule 9014.

(d) Rule 1017 is amended to provide that a motion to dismiss a chapter 7 case under § 707(b) is governed by Rule 9014 when initiated by the United States trustee, but is not governed by Rule 9014 when initiated on the court's own motion. The amendments also clarify which entities receive notice of a motion to dismiss under § 707(b).

(e) Rule 2001(a) is amended to conform to the proposed amendments to Rule 9014 and to clarify that a motion for an interim trustee in an involuntary case is governed by Rule 9014.

(f) Rule 2004 is amended to provide that a request for an order to examine an entity under the rule is made by application under Rule 9013. The amendments also clarify that the examination may be held outside the district in which the case is pending if the subpoena is issued by the court

for the district in which the examination is to be held. An attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice either in that court or in the court in which the bankruptcy case is pending.

(g) Rule 2007 is amended to conform to the proposed amendments to Rule 9014.

(h) Rule 2014 has been substantially revised to provide more detailed procedures for obtaining an order authorizing the employment of professionals. A request for court authorization under this Rule is by motion, but is not governed by Rule 9013 or Rule 9014. The amendments provide new notice and service requirements, provide for interim approval of the employment of professionals, and specify requirements for initial disclosures and for supplemental disclosures.

(i) Rule 2016 is amended to provide that a request for compensation for services rendered and for reimbursement of expenses is made by motion governed by Rule 9014, rather than by application. The rule is amended to conform to the proposed amendments to Rule 9014.

(j) Rule 3001(e) is amended to provide that an objection or motion under that rule relating to a transfer of a claim is governed by Rule 9014, and to conform to the proposed amendments to Rule 9014.

(k) Rule 3006 is amended to conform to the proposed amendments to Rule 9014.

(l) Rule 3007 is amended to provide that, unless it is joined with a demand for relief that requires commencement of an adversary proceeding, an objection to the allowance of a claim is made by motion governed by Rule 9014. The rule also provides that the motion must be served at least 30 days before the hearing despite the notice provisions contained in Rule 9014(c).

(m) Rule 3012 is amended to conform to the proposed amendments to Rule 9014.

(n) Rule 3013 is amended to provide that a motion to determine classification of claims and interests is governed by Rule 9014.

(o) Rule 3015(f) is amended to provide more detailed procedures governing an objection to confirmation of a chapter 12 or chapter 13 plan, which is not governed by Rule 9014. Rule 3015(g) is amended to provide that a request to modify a chapter 12 or chapter 13 plan after confirmation is a motion governed by Rule 9014.

(p) Rule 3019 is amended to conform to the proposed amendments to Rule 9014.

(q) Rule 3020(b) is amended to provide more detailed procedures governing an objection to confirmation of a chapter 9 or chapter 11 plan, which is not governed by Rule 9014.

(r) Rule 4001 is amended to conform to the proposed amendments to Rule 9014.

(s) Rule 6004 is amended to conform to the proposed amendments to Rule 9014. If a timely objection is filed after the trustee sends to creditors a notice of a proposed use, sale, or lease of property under § 363(b), the notice is treated as a motion governed by Rule 9014 and the objection is treated as a response. But if the trustee is seeking to sell property free and clear of liens and other interests under § 363(f), the trustee must file a motion governed by Rule 9014 and any party who wants to object must file a response to the motion in accordance with Rule 9014.

(t) Rule 6006 is amended to conform to the proposed amendments to Rule 9014.

(u) Rule 6007 is amended to provide that an objection to a proposed abandonment or disposition of property is governed by Rule 9014. The objection is made by filing and serving a motion in accordance with Rule 9014 before the time to object expires.

(v) Rule 9006(d) is amended to limit it to

motions made within adversary proceedings under Part VII of the rules, and to procedural or dispositive motions relating to pending administrative proceedings under Rule 9014.

(w) Rule 9013 is completely revised to govern a category of proceedings, called "applications," that relate to certain enumerated matters which, in most instances, are nonsubstantive and noncontroversial. The provisions of Rule 9013 will enable parties to obtain certain types of relief in a much shorter time period and with less expense when compared to the procedural requirements for administrative motions under the proposed amendments to Rule 9014. See *"Introduction to Preliminary Draft of Proposed Amendments to the Federal Rules of Bankruptcy Procedure Relating to Litigation and Motion Practice,"* above, for a more detailed discussion of the proposed amendments to Rule 9013.

(x) Rule 9014 is completely revised, and the title has been changed from "Contested Matters" to "Administrative Proceedings." The amendments provide uniform and detailed procedures for motions that relate to the administration of the bankruptcy case or the estate, such as a motion seeking the appointment of a chapter 11 trustee, a motion to reject an executory contract, or a motion for authorization to obtain credit. These motions are usually unrelated to any other pending litigation. For a more detailed discussion of the proposed amendments to Rule 9014, see *"Introduction to Preliminary Draft of Proposed Amendments to the Federal Rules of Bankruptcy Procedure Relating to Litigation and Motion Practice,"* above.

(y) Rule 9017 is amended to conform to the proposed amendments to Rule 9014, which provides that Rule 43(e) F.R.Civ.P. does not apply at an evidentiary hearing under Rule 9014. The effect of this amendment is that a witness must testify in open court, rather than by affidavit, at an evidentiary hearing in an administrative proceeding.

(z) Rule 9021 is amended to conform to the

proposed amendments to Rule 9014.

(aa) Rule 9034 is amended to add several types of proceedings in which the United States trustee is entitled to receive copies of pleadings and other papers. These amendments are necessary because provisions requiring transmission of such papers to the United States trustee have been deleted from the text of several rules. The amendments also will require that papers relating to the election of a chapter 11 trustee be transmitted to the United States trustee.

3. *Text of Proposed Amendments ("Litigation Package"):*

Rule 1006. Filing Fee

1 (a) GENERAL REQUIREMENT. Every petition shall be
2 accompanied by the filing fee except as provided in
3 ~~subdivision (b) of this rule Rule 1006(b) or (c).~~ For the
4 ~~purpose purposes~~ of this rule, "filing fee" means the filing
5 fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any
6 other fee prescribed by the Judicial Conference of the
7 United States under 28 U.S.C. § 1930(b) that is payable to
8 the clerk ~~upon the commencement of a case under the Code~~
9 when the case is commenced.

10 (b) ~~PAYING PAYMENT OF FILING FEE~~ IN INSTALLMENTS.

11 (1) ~~Request Application for Permission to Pay~~
12 ~~Filing Fee in Installments. The clerk shall~~
13 ~~accept for filing an individual's voluntary~~
14 ~~petition if it is A voluntary petition by an~~
15 ~~individual shall be accepted for filing if~~
16 accompanied by the debtor's signed
17 ~~application request~~ stating that the debtor
18 is unable to pay the filing fee except in
19 installments. The ~~application request~~ shall
20 state the proposed terms of the installment
21 payments and that the ~~applicant debtor~~ has
22 neither paid any money nor transferred any

23 property to an attorney for services in
24 connection with the case.

25 (2) *Action on ~~Application~~ the Request. Before
26 ~~Prior to~~ the meeting of creditors, with or
27 without notice or a hearing, the court may
28 order the filing fee paid to the clerk or
29 grant leave to pay it in installments and fix
30 the number, amount, and dates of payment. The
31 number of installments shall not exceed four,
32 and the final installment shall be payable
33 ~~not~~ no later than 120 days after ~~filing~~ the
34 petition is filed. For cause ~~shown~~, the court
35 may extend the time of any installment to a
36 time that is, ~~provided the last installment~~
37 ~~is paid not~~ no later than 180 days after
38 ~~filing~~ the petition is filed.*

39 (3) *~~Postponement~~ Postponing Payment of Attorney's
40 Other Fees. After a petition is filed, The
41 the filing fee must be paid in full before
42 the debtor or chapter 13 trustee may pay an
43 attorney, bankruptcy petition preparer, or
44 any other person who renders services to the
45 debtor in connection with the case.*

COMMITTEE NOTE

This rule is amended to provide that a request to pay the filing fee in installments may be granted by the court without notice or a hearing. The procedural requirements for an application under Rule 9013 or an administrative motion under Rule 9014 are not applicable to these requests.

Under subdivision (b)(1), the debtor is required to state in the request for permission to pay the filing fee in installments that the debtor has neither paid money nor transferred property to an attorney for services rendered in connection with the case. A similar statement is not required with respect to bankruptcy petition preparers. A debtor who pays a bankruptcy petition preparer should not be disqualified from paying the filing fee in installments. But after the petition is filed, the debtor is prohibited by Rule 1006(b)(3) from paying fees to an attorney, bankruptcy petition preparer, or any other person for services in connection with the case until the filing fee, including every installment, is paid in full.

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

* * * * *

1 (c) TIME LIMITS. Except as provided in Rule
2 1007(d), (e) and (i), in a voluntary case, the
3 debtor shall file the ~~The~~ schedules and statements,
4 other than the statement of intention, shall be
5 filed with the petition in a voluntary case, or, if
6 the petition is accompanied by a list of all the
7 debtor's creditors and their addresses, within 15
8 days after the petition is filed, within 15 days
9 thereafter, except as otherwise provided in

10 ~~subdivisions (d), (e), and (h) of this rule.~~ In an
11 involuntary case, the debtor shall file the
12 schedules and statements, other than the statement
13 of intention, ~~shall be filed by the debtor within 15~~
14 days after ~~entry of the order for relief is~~
15 entered. Unless the court directs otherwise,
16 ~~schedules~~ Schedules and statements filed ~~prior to~~
17 ~~before a case is converted the conversion of a case~~
18 to another chapter ~~shall be~~ are deemed filed in the
19 converted case ~~unless the court directs otherwise.~~
20 ~~Any A request to extend the for an extension of time~~
21 for ~~the filing of the schedules and statements may~~
22 be granted with or without notice or a hearing only
23 ~~on motion for cause shown and on notice to the~~
24 ~~United States trustee and to any committee elected~~
25 ~~under § 705 or appointed under § 1102 of the Code,~~
26 ~~trustee, examiner, or other party as the court may~~
27 ~~direct.~~ Notice of an extension of time shall be
28 given to the United States trustee and to any
29 committee, trustee, or other party as the court may
30 direct.

* * * * *

COMMITTEE NOTE

This rule is amended to provide that a request for an extension of time to file schedules and

statements under subdivision (c) may be resolved by the court without notice or a hearing. The procedural requirements for an application under Rule 9013 or an administrative motion under Rule 9014 are not applicable to the request. The other amendments are stylistic.

Rule 1014. Dismissal and Change of Venue

1 (a) DISMISSAL AND TRANSFER OF CASES.

2 (1) *Cases Filed in Proper District.* If a
3 petition is filed in a proper district and
4 a party in interest makes a, ~~on~~ timely
5 ~~motion, of a party in interest, and after~~
6 ~~hearing on notice to the petitioners, the~~
7 ~~United States trustee, and other entities~~
8 ~~as directed by the court, the case may be~~
9 ~~transferred~~ the court may transfer the case
10 to any other district if ~~the court~~ it
11 determines that the transfer is in the
12 interest of justice or for the convenience
13 of the parties.

14 (2) *Cases Filed in Improper District.* If a
15 petition is filed in an improper district
16 and a party in interest makes a, ~~on~~ timely
17 ~~motion, of a party in interest, and after~~
18 ~~hearing on notice to the petitioners, the~~
19 ~~United States trustee, and other entities~~

20 ~~as directed by the court, the case may be~~
21 ~~dismissed or transferred to any other~~
22 ~~district if the court determines that~~
23 ~~transfer is in the interest of justice or~~
24 ~~for the convenience of the parties the~~
25 ~~court may dismiss the case or, if it~~
26 ~~determines that transfer is in the interest~~
27 ~~of justice or for the convenience of the~~
28 ~~parties, transfer the case to another~~
29 ~~district.~~

30 (b) ~~PROCEDURE WHEN~~ PETITIONS INVOLVING THE SAME
31 DEBTOR OR RELATED DEBTORS ~~ARE~~ FILED IN DIFFERENT
32 DISTRICTS COURTS. If petitions ~~commencing cases under~~
33 ~~the Code~~ are filed in different districts by or against
34 (1) the same debtor, ~~or~~ (2) a partnership and one or
35 more of its general partners, ~~or~~ (3) two or more
36 general partners, or (4) a debtor and an affiliate, on
37 motion filed in the district in which the petition
38 filed first is pending ~~and after hearing on notice to~~
39 ~~the petitioners, the United States trustee, and other~~
40 ~~entities as directed by the court, the court may shall~~
41 ~~determine, in the interest of justice or for the~~
42 ~~convenience of the parties, the district or districts~~
43 ~~in which the ~~case or~~ cases should proceed. ~~Except as~~~~

44 ~~otherwise ordered by the court in the district in which~~
45 ~~the petition filed first is pending, the proceedings on~~
46 ~~the other petitions shall be stayed by the courts in~~
47 ~~which they have been filed until the determination is~~
48 ~~made. Until that determination is made, any other court~~
49 ~~where another petition is pending shall stay its~~
50 ~~proceedings unless the court in which the motion is~~
51 ~~pending orders otherwise.~~

52 (c) PROCEDURE GOVERNING MOTION. Rule 9014 governs a
53 motion made under this rule. Every entity filing a
54 petition against the debtor under § 303 of the Code
55 shall be treated as an entity listed in Rule
56 9014(c)(1).

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rules 9014 and 9034. The list of entities entitled to notice of a hearing on transfer or dismissal of a case under this rule is deleted as unnecessary because Rule 9014, which governs a motion under this rule, sets forth the list of entities entitled to service of the motion papers. Reference to the United States trustee is unnecessary because Rule 9034 includes the transfer or dismissal of a case in the list of matters with respect to which the United States trustee is entitled to receive papers.

Rule 1017. Dismissal or Conversion of Case; Suspension

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States trustee shall set forth in the motion all matters to be submitted to the court for its consideration at the hearing.

(2) If the hearing is set on the court's own motion, notice of the hearing shall be served on the debtor, the debtor's attorney, and the trustee no later than 60 days after the first date set for the meeting of creditors under § 341(a). The notice shall set forth all matters to be considered by the court at the hearing. The clerk shall transmit a copy of the notice to the United States trustee.

(f) PROCEDURE FOR DISMISSAL, CONVERSION, OR SUSPENSION.

(1) Rule 9014 governs a proceeding to dismiss or suspend a case, or to convert a case to another chapter, except under §§706(a), 1112(a), 1208(a) or (b), ~~or~~ 1307(a) or (b), or Rule 1017(e)(2).

(2) Conversion or dismissal under §§ 706(a), 1112(a), 1208(b), or 1307(b) shall be on motion application filed and served as required by Rule 9013.

48 (3) A chapter 12 or chapter 13 case shall be
49 converted without court order when the
50 debtor files a notice of conversion under
51 §§ 1208(a) or 1307(a). The filing date of
52 the notice becomes the date of the
53 conversion order for the purposes of
54 applying § 348(c) and Rule 1019. The clerk
55 shall promptly transmit a copy of the
56 notice to the United States trustee.

COMMITTEE NOTE

Subdivision (e) is amended to delete the list of the entities entitled to service of the motion except when the motion is on the court's own initiative. When the United States trustee files the motion for dismissal under § 707(b), the list of the entities to be served is in Rule 9014(c)(1).

Subdivision (f) is amended to provided that a proceeding to dismiss a case under § 707(b) is not governed by Rule 9014 if it is initiated on the court's own motion.

**Rule 2001. Appointment of Interim Trustee
Before Order for Relief in a Chapter 7 Liquidation Case**

1 (a) APPOINTMENT. At any time after following the
2 ~~commencement of an involuntary liquidation case is~~
3 commenced under chapter 7 and before an order for
4 relief, the court on ~~written~~ motion of a party in
5 interest may order the appointment of an interim

6 trustee under § 303(g) of the Code. ~~The motion shall~~
7 ~~set forth the necessity for the appointment and may be~~
8 ~~granted only after hearing on notice to the debtor, the~~
9 ~~petitioning creditors, the United States trustee, and~~
10 ~~other parties in interest as the court may designate.~~
11 Rule 9014 governs the motion. Every entity filing a
12 petition against the debtor under § 303 shall be
13 treated as an entity listed in Rule 9014(c)(1).

COMMITTEE NOTE

This rule is amended to provide that a motion for the appointment of an interim trustee is governed by Rule 9014. The petitioners, as well as the entities listed in Rule 9014(c)(1), are entitled to be served with the motion papers. Reference to the United States trustee is unnecessary because Rule 9034 includes the appointment of an interim trustee on the list of matters as to which the United States trustee is entitled to receive papers.

Rule 2004. Examination

1 (a) EXAMINATION ON ~~MOTION~~ APPLICATION. On motion
2 application of any party in interest, the court may
3 order the examination of any entity. Rule 9013 governs
4 the application.

5 ****

6 (c) COMPELLING ATTENDANCE AND PRODUCTION OF
7 DOCUMENTS ~~DOCUMENTARY EVIDENCE~~. The attendance of an

8 entity for examination and for the production of
9 ~~documentary evidence documents, whether the examination~~
10 is to be conducted within or without the district in
11 which the case is pending, may be compelled ~~in the~~
12 manner as provided in Rule 9016 for the attendance of a
13 witness witnesses at a hearing or trial. As an officer
14 of the court, an attorney may issue and sign a subpoena
15 on behalf of the court for the district in which the
16 examination is to be held if the attorney is authorized
17 to practice in that court or in the court in which the
18 case is pending.

COMMITTEE NOTE

Subdivision (a) is amended to conform to the amendments to Rule 9013, which governs an application for an order under this rule.

Subdivision (c) is amended to clarify that an examination ordered pursuant to Rule 2004(a) may be held outside the district in which the case is pending if the subpoena is issued by the court for the district in which the examination is to be held and is served in the manner provided in Rule 45 F.R.Civ.P., made applicable by Rule 9016.

The subdivision is amended further to clarify that, in addition to the procedures for the issuance of a subpoena set forth in Rule 45 F.R.Civ.P., an attorney may issue and sign a subpoena on behalf of the court for the district in which a Rule 2004 examination is to be held if the attorney is authorized to practice either in the court in which the case is pending or in the court for the district in which the examination is

to be held. This provision supplements the procedures for the issuance of a subpoena set forth in Rule 45(a)(3)(A) and (B) F.R.Civ.P. and is consistent with one of the purposes of the 1991 amendments to Rule 45, to ease the burdens of interdistrict law practice.

**Rule 2007. Review of Appointment of Creditors'
Committee Organized Before Commencement of the
a Chapter 9 or Chapter 11 Case**

1 (a) MOTION TO REVIEW APPOINTMENT. If a committee
2 appointed by the United States trustee ~~pursuant to~~
3 under § 1102(a) of the Code consists of the members of
4 a committee organized by creditors before ~~the~~
5 ~~commencement of~~ a chapter 9 or chapter 11 case was
6 commenced, on motion of a party in interest ~~and after a~~
7 ~~hearing on notice to the United States trustee and~~
8 ~~other entities as the court may direct~~, the court may
9 determine whether the appointment ~~of the committee~~
10 satisfies the requirements of § 1102(b)(1) ~~of the Code~~.
11 Rule 9014 governs the motion. If the court finds that
12 the appointment failed to satisfy the requirements of §
13 1102(b)(1), the court shall direct the United States
14 trustee to vacate the appointment of the committee and
15 may order other appropriate relief.

16 (b) SELECTION OF COMMITTEE MEMBERS ~~OF COMMITTEE~~. The
17 court may find that a committee organized by unsecured
18 creditors before the commencement of a chapter 9 or

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chapter 11 case was fairly chosen if:

- (1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 702(a) ~~of the Code~~ and who attended were present in person or were represented at a meeting ~~for~~ of which all creditors having unsecured claims of over \$1,000, or the 100 unsecured creditors having the largest claims, had been given at least five ~~days~~ days' notice in writing, and ~~of~~ at which ~~meeting~~ written minutes reporting the names of the creditor witnesses present or represented and voting and the amounts of their claims were kept and are available for inspection;
- (2) all proxies voted at the meeting for the elected committee were solicited ~~pursuant to~~ in accordance with Rule 2006 and the lists and statements required by Rule 2006(e) ~~subdivision (e)~~ thereof have been transmitted to the United States trustee; and
- (3) the organization of the committee was in all other respects fair and proper.

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~~(c) FAILURE TO COMPLY WITH REQUIREMENTS FOR APPOINTMENT. After a hearing on notice pursuant to subdivision (a) of this rule, the court shall direct the United States trustee to vacate the appointment of the committee and may order other appropriate action if the court finds that such appointment failed to satisfy the requirements of § 1102(b)(1) of the Code.~~

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014 and to make stylistic improvements.

Rule 2014. Employment of Professional Persons Person

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(a) MOTION FOR AN ORDER AUTHORIZING EMPLOYMENT. A request for an order authorizing employment under § 327, § 1103, or § 1114 of the Code may be made only by written motion of the trustee or committee. The motion shall:

- (1) state specific facts showing why the employment is necessary;
- (2) state the name of the person to be employed and the reasons for the selection;
- (3) state the professional services to be rendered;
- (4) disclose any proposed arrangement for

13 compensation;

14 (5) state that, to the best of the movant's
15 knowledge, the person to be employed is
16 eligible under the Bankruptcy Code for
17 employment for the purposes set forth in
18 the motion; and

19 (6) disclose any interest that the person to be
20 employed holds or represents that is
21 adverse to the estate.

22 (b) STATEMENT OF PROFESSIONAL. The motion shall be
23 accompanied by a verified statement of the person to be
24 employed. The statement shall:

25 (1) state that the person is eligible under the
26 Bankruptcy Code for employment for the
27 purposes set forth in the motion;

28 (2) disclose any interest that the person holds
29 or represents that is adverse to the
30 estate;

31 (3) disclose the person's connections with the
32 debtor, creditors, or any other party in
33 interest, their respective attorneys and
34 accountants, the United States trustee, or
35 any person employed in the office of the
36 United States trustee;

37 (4) if the professional is an attorney, state
38 the information required to be disclosed
39 under § 329(a); and

40 (5) state whether the person shared or has
41 agreed to share any compensation with any
42 person and, if so, the particulars of any
43 sharing or agreement to share other than
44 the details of any agreement for the
45 sharing of compensation with a partner,
46 employee, or regular associate of the
47 partnership, corporation, or person to be
48 employed.

49 (c) SERVICE. The motion and at least 10 days'
50 notice of the hearing shall be transmitted to the
51 United States trustee, unless the case is a chapter 9
52 case, and shall be served on:

53 (1) the trustee;

54 (2) any committee elected under § 705 or
55 appointed under § 1102 of the Code, or the
56 committee's authorized agent;

57 (3) the creditors included on the list filed
58 under Rule 1007(d); and

59 (4) any other entity as the court may direct.

60 (d) HEARING. The court may resolve the motion

61 without a hearing if no objection or request for a
62 hearing is filed at least 2 days before the scheduled
63 hearing date.

64 (e) INTERIM EMPLOYMENT ORDER. If the motion so
65 requests, the court may authorize employment on an
66 interim basis without notice and a hearing pending
67 resolution of the motion. A copy of the order
68 authorizing employment on an interim basis, the motion,
69 and at least 5 days' notice of the hearing shall be
70 served forthwith on the entities listed in Rule
71 2014(c). The hearing shall be scheduled for a time
72 that is not more than 14 days after service of the
73 order authorizing interim employment, unless the court
74 orders otherwise.

75 (f) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM
76 OF EMPLOYED PROFESSIONAL. If, under the Code and this
77 rule, a court authorizes the employment of an
78 individual, partnership, or corporation, any partner,
79 member, or regular associate of the individual,
80 partnership, or corporation may act as the person so
81 employed, without further order of the court. If a
82 partnership is employed, a further order authorizing
83 employment is not required solely because the
84 partnership has dissolved due to the addition or

85 withdrawal of a partner.

86 (g) SUPPLEMENTAL STATEMENT OF PROFESSIONAL. Within
87 15 days after becoming aware of any matter that is
88 required to be disclosed under Rule 2014(b), but that
89 has not yet been disclosed, a person employed under
90 this rule shall file a supplemental verified statement,
91 serve copies on the entities listed in Rule 2014(c)
92 and, unless the case is a chapter 9 municipality case,
93 transmit a copy to the United States trustee.

94 ~~(a) APPLICATION FOR AN ORDER OF EMPLOYMENT. An order~~
95 ~~approving the employment of attorneys, accountants,~~
96 ~~appraisers, auctioneers, agents, or other professionals~~
97 ~~pursuant to § 327, § 1103, or § 1114 of the Code shall~~
98 ~~be made only on application of the trustee or~~
99 ~~committee. The application shall be filed and, unless~~
100 ~~the case is a chapter 9 municipality case, a copy of~~
101 ~~the application shall be transmitted by the applicant~~
102 ~~to the United States trustee. The application shall~~
103 ~~state the specific facts showing the necessity for the~~
104 ~~employment, the name of the person to be employed, the~~
105 ~~reasons for the selection, the professional services to~~
106 ~~be rendered, any proposed arrangement for compensation,~~
107 ~~and, to the best of the applicant's knowledge, all of~~
108 ~~the person's connections with the debtor, creditors,~~

109 ~~any other party in interest, their respective attorneys~~
110 ~~and accountants, the United States trustee, or any~~
111 ~~person employed in the office of the United States~~
112 ~~trustee. The application shall be accompanied by a~~
113 ~~verified statement of the person to be employed setting~~
114 ~~forth the person's connections with the debtor,~~
115 ~~creditors, any other party in interest, their~~
116 ~~respective attorneys and accountants, the United States~~
117 ~~trustee, or any person employed in the office of the~~
118 ~~United States trustee.~~

119 ~~(b) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM~~
120 ~~OF ATTORNEYS OR ACCOUNTANTS. If, under the Code and~~
121 ~~this rule, a law partnership or corporation is employed~~
122 ~~as an attorney, or an accounting partnership or~~
123 ~~corporation is employed as an accountant, or if a named~~
124 ~~attorney or accountant is employed, any partner,~~
125 ~~member, or regular associate of the partnership,~~
126 ~~corporation or individual may act as attorney or~~
127 ~~accountant so employed, without further order of the~~
128 ~~court.~~

COMMITTEE NOTE

This rule is amended to improve the procedures for obtaining an order authorizing the employment of

professionals. The trustee -- which is defined in Rule 9001(10) to include a debtor in possession in a chapter 11 case -- or a committee seeking authorization is required to file a motion, rather than an application, and copies of the motion must be served on the parties in interest specified in the rule. If the motion requests, the court may authorize employment on an interim basis without a hearing so as to avoid delays in obtaining professional assistance immediately.

The moving party is required to state that, to the best of the person's knowledge, the professional to be employed is eligible to serve. The rule also requires that the professional state in a verified statement that the professional is eligible to serve. Eligibility is governed by the Bankruptcy Code and may depend on the purposes for which the professional is to be employed. For example, an attorney may be employed to represent the trustee or debtor in possession under § 327(a) only if the person is disinterested. See 11 U.S.C. § 101 for the definition of "disinterested." If an attorney is retained solely as special counsel under § 327(e), the professional need not be disinterested so long as other requirements are met. Nonetheless, regardless of the purpose for which the professional is to be employed, the moving party must disclose any interest that the person to be employed holds or represents that is adverse to the estate. The amendments to this rule also add to the matters that must be disclosed any arrangements for sharing compensation.

Subdivision (f) is expanded to cover firms when the professional is not an attorney or accountant, and is amended to clarify that, if a partnership is employed, a further order authorizing employment is not required solely because the partnership has dissolved due to the addition or withdrawal of a partner.

Subdivision (g) is added to require timely supplemental disclosure of a matter required to be disclosed, whether or not the matter to be disclosed relates to an event occurring subsequent to a statement previously filed under this rule.

**Rule 2016. Compensation for Services Rendered
and Reimbursement of Expenses**

~~(a) APPLICATION FOR COMPENSATION OR REIMBURSEMENT.~~

~~An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement~~

19 ~~or understanding therefor, except that details of any~~
20 ~~agreement by the applicant for the sharing of~~
21 ~~compensation as a member or regular associate of a firm~~
22 ~~of lawyers or accountants shall not be required. The~~
23 ~~requirements of this subdivision shall apply to an~~
24 ~~application for compensation for services rendered by~~
25 ~~an attorney or accountant even though the application~~
26 ~~is filed by a creditor or other entity. Unless the case~~
27 ~~is a chapter 9 municipality case, the applicant shall~~
28 ~~transmit to the United States trustee a copy of the~~
29 ~~application.~~

30 (a) MOTION FOR COMPENSATION OR REIMBURSEMENT. Rule
31 9014 governs a motion for interim or final payment from
32 the estate for compensation for services rendered or
33 the reimbursement of expenses.

34 (1) The motion shall state the amount
35 requested, the services rendered, the time
36 expended, and the expenses incurred. If
37 compensation is requested, the motion shall
38 also state:

39 (A) the source and the amount of any
40 payments that have been made or
41 promised for services rendered or to
42 be rendered in any capacity in

43 connection with the case;
44 (B) whether any compensation previously
45 received has been shared and whether
46 an agreement or understanding exists
47 between the movant and any other
48 entity to share compensation received
49 or to be received for services
50 rendered in or in connection with the
51 case; and
52 (C) the particulars of any sharing of
53 compensation or any agreement or
54 understanding with respect to sharing
55 compensation, but the details of any
56 agreement by the movant to share
57 compensation as a member or regular
58 associate of a firm of lawyers or
59 accountants is not required.
60 (2) This Rule 2016(a) applies to a motion for
61 compensation for services rendered by an
62 attorney or accountant even if the motion
63 is filed by a creditor or other entity.

COMMITTEE NOTE

This rule is amended to provide that a proceeding for compensation or reimbursement of

expenses from the estate is governed by Rule 9014. The provision requiring transmittal of papers to the United States trustee is deleted as unnecessary. See Rule 9034. The other amendments are stylistic.

Rule 3001. Proof of Claim

1 (e) TRANSFERRED CLAIM.

2 ****

3 ~~(5) Service of Objection or Motion; Notice of~~
4 ~~Hearing. A copy of an objection filed pursuant~~
5 ~~to paragraph (2) or (4) or a motion filed~~
6 ~~pursuant to paragraph (3) or (4) of this~~
7 ~~subdivision together with a notice of a hearing~~
8 ~~shall be mailed or otherwise delivered to the~~
9 ~~transferor or transferee, whichever is~~
10 ~~appropriate, at least 30 days prior to the~~
11 ~~hearing.~~

12 (5) Procedures. An objection under Rule
13 3001(e) (2) or (4), or a motion under Rule
14 3001(e) (3) or (4), is governed by Rule
15 9014. The transferor or transferee,
16 whichever is appropriate, shall be treated
17 as an entity listed in Rule 9014(c) (1).

COMMITTEE NOTE

Paragraph (e)(5) is amended to provide that an objection or motion under Rule 3001(e) is governed by Rule 9014. An objection is made by filing a motion in accordance with Rule 9014. Since the objection or motion is governed by Rule 9014, service must be made 20 days before the hearing date, rather than 30 days as is provided under the current Rule 3001(e)(5).

The other amendments are stylistic.

**Rule 3006. Withdrawal of Claim; Effect on Acceptance
or Rejection of Plan**

1 (a) WITHDRAWAL OF CLAIM. Except as provided in this
2 rule, a creditor may withdraw a claim as of right by
3 filing a notice of withdrawal, except as provided in
4 this rule. Unless the court orders otherwise, a
5 creditor may not withdraw a claim if, after the
6 creditor files a proof of claim, if after a creditor
7 has filed a proof of claim an objection to the claim is
8 filed, thereto or a complaint is filed against that the
9 creditor in an adversary proceeding, or the creditor
10 has accepted or rejected the a plan, or the creditor
11 has otherwise or otherwise has participated
12 significantly in the case, the creditor may not
13 withdraw the claim except on order of the court after a
14 hearing on notice to the trustee or debtor in
15 possession, and any creditors' committee elected

16 ~~pursuant to § 705(a) or appointed pursuant to § 1102 of~~
17 ~~the Code. Rule 9014 governs a motion to withdraw a~~
18 ~~claim. The order may include order of the court shall~~
19 ~~contain such terms and conditions as which the court~~
20 ~~deems considers proper.~~

21 (b) EFFECT ON ACCEPTANCE OR REJECTION OF A PLAN.

22 Unless the court orders otherwise, an authorized
23 withdrawal of a claim ~~shall constitute~~ constitutes
24 withdrawal of any related acceptance or rejection of a
25 plan.

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014. The list of entities entitled to notice of the hearing on a creditor's withdrawal of a claim is deleted as unnecessary. See Rule 9014(c). The other amendments are stylistic.

Rule 3007. Objections to Claims

1 An objection to the allowance of a claim is treated
2 as a motion governed by Rule 9014, except that (a) the
3 motion shall be served at least 30 days before the
4 hearing, and (b) an objection joined with a demand for
5 relief of the kind specified in Rule 7001 is an
6 adversary proceeding shall be in writing and filed. A

7 ~~copy of the objection with notice of the hearing~~
8 ~~thereon shall be mailed or otherwise delivered to the~~
9 ~~claimant, the debtor or debtor in possession and the~~
10 ~~trustee at least 30 days prior to the hearing. If an~~
11 ~~objection to a claim is joined with a demand for relief~~
12 ~~of the kind specified in Rule 7001, it becomes an~~
13 ~~adversary proceeding.~~

COMMITTEE NOTE

This rule is amended to clarify that an objection to the allowance of a claim is an administrative proceeding governed by Rule 9014. An objection is made by filing a motion in accordance with Rule 9014(b). But service of the motion must be made at least 30 days before the hearing date, rather than 20 days as is required for administrative motions under Rule 9014(c). The claimant may file a response under Rule 9014(d).

If an objection to a claim is joined with relief of the kind specified in Rule 7001, the objecting party must file and serve a complaint commencing an adversary proceeding under Part VII of these Rules.

The other amendments are stylistic.

Rule 3012. Valuation of the Estate's Property Securing Lien Security

1 On motion, the court may determine the value of a
2 secured creditor's interest in the estate's interest in
3 property ~~a claim secured by a lien on property in which~~
4 ~~the estate has an interest on motion of any party in~~

5 ~~interest and after a hearing on notice to the holder of~~
6 ~~the secured claim and any other entity as the court may~~
7 ~~direct. The motion is governed by Rule 9014, and the~~
8 ~~holder of the secured claim shall be treated as an~~
9 ~~entity listed in Rule 9014(c)(1).~~

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014. Other amendments are stylistic.

Rule 3013. Classification of Claims and Interests

1 ~~For the purposes of the plan and its acceptance, the~~
2 ~~court may, on motion after hearing on notice as the~~
3 ~~court may direct, On motion, the court may determine~~
4 ~~classes of creditors and equity security holders~~
5 ~~pursuant to §§ under § 1122, § 1222(b)(1), and or §~~
6 ~~1322(b)(1) of the Code for purposes of the plan and its~~
7 ~~acceptance. The motion is governed by Rule 9014.~~

COMMITTEE NOTE

This rule is amended to provide that the motion to determine classification of claims and interests is governed by Rule 9014. The other amendments are stylistic.

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

1 (f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD
2 FAITH IN THE ABSENCE OF AN OBJECTION. A party in
3 interest may object to confirmation of a plan by filing
4 an objection before the plan is confirmed. The
5 objecting party shall serve a copy of the objection An
6 ~~objection to confirmation of a plan shall be filed and~~
7 ~~served on the debtor, the debtor's attorney, and the~~
8 ~~trustee, and any other entity designated by the court~~
9 ~~in the manner provided in Rule 9014(c)(2), and shall be~~
10 ~~transmitted~~ transmit a copy to the United States
11 trustee, before the plan is confirmed ~~confirmation of~~
12 ~~the plan. An objection to confirmation is governed by~~
13 ~~Rule 9014.~~ Discovery may be obtained in the manner
14 provided in Rule 9014(h). If no objection is ~~timely~~
15 filed, the court may determine, without receiving
16 evidence, that the plan has been proposed in good faith
17 and not by any means forbidden by law ~~without receiving~~
18 ~~evidence on such issues.~~

19 (g) MODIFICATION OF PLAN AFTER CONFIRMATION. A
20 request to modify a plan under ~~pursuant to~~ § 1229 or §
21 ~~1329 of the Code~~ is made by motion governed by Rule

22 9014. Every creditor that would be affected by the
23 proposed modification shall be treated as an entity
24 listed in Rule 9014(c)(1), but a respondent is not
25 required to serve the response on any creditor other
26 than the movant unless the court directs otherwise. The
27 motion shall include a copy or summary of the proposed
28 modification. shall identify the proponent and shall be
29 filed together with the proposed modification. The
30 clerk, or some other person as the court may direct,
31 shall give the debtor, the trustee, and all creditors
32 not less than 20 days notice by mail of the time fixed
33 for filing objections and, if an objection is filed,
34 the hearing to consider the proposed modification,
35 unless the court orders otherwise with respect to
36 creditors who are not affected by the proposed
37 modification. A copy of the notice shall be transmitted
38 to the United States trustee. A copy of the proposed
39 modification, or a summary thereof, shall be included
40 with the notice. If required by the court, the
41 proponent shall furnish a sufficient number of copies
42 of the proposed modification, or a summary thereof, to
43 enable the clerk to include a copy with each notice.
44 Any objection to the proposed modification shall be
45 filed and served on the debtor, the trustee, and any

46 ~~other entity designated by the court, and shall be~~
47 ~~transmitted to the United States trustee. An objection~~
48 ~~to a proposed modification is governed by Rule 9014.~~

COMMITTEE NOTE

Subdivision (f) is amended to conform to Rule 9014(a) which, as amended, will provide that an objection to confirmation of a plan under this rule is not governed by Rule 9014. Although an objection under Rule 3015(f) is not an administrative proceeding under Rule 9014, service of the objection must be made in the manner provided in Rule 9014(c) (2) and discovery may be obtained in the manner provided in Rule 9014(h).

Deletion of the phrase "any other entity designated by the court" from the entities entitled to receive copies of an objection is intended to avoid the appearance that an objecting party, before serving the objection, must inquire as to the proper parties to be served. This amendment is not intended to deprive the court of the power to require, in a particular case, that a copy of an objection be served on another entity.

Consistent with the amendments to Rule 9014, a copy of an objection must be served on the debtor's attorney.

Subdivision (g) is amended to provide that a request to modify a chapter 12 or chapter 13 plan after confirmation is an administrative proceeding governed by Rule 9014. The movant is required to serve all creditors that would be affected by the proposed modification.

The other amendments are stylistic.

Rule 3019. Modification of Accepted Plan Before Confirmation in a Chapter 9 Municipality Case or a Chapter 11 Reorganization Case

1 In a chapter 9 or chapter 11 case, after a plan

2 has been accepted and before its confirmation, the
3 proponent may file a modification of the plan. If on
4 motion the court finds ~~after hearing on notice to the~~
5 ~~trustee, any committee appointed under the Code, and~~
6 ~~any other entity designated by the court~~ that the
7 proposed modification does not adversely change the
8 treatment of the claim of any creditor or the interest
9 of any equity security holder who has not accepted the
10 modification in writing ~~the modification, the plan as~~
11 ~~modified~~ it shall be deemed accepted by all creditors
12 and equity security holders who have previously
13 accepted the plan. Rule 9014 governs the motion.

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014. The list of entities entitled to notice is deleted as unnecessary because Rule 9014, which governs motions under this rule, includes a list of entities to be served. See the amendments to Rule 9014(c)(1).

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

1 (b) ~~OBJECTION TO AND HEARING ON CONFIRMATION~~
2 CONFIRMATION OF A PLAN IN A CHAPTER 9 OR CHAPTER 11

3 CASE.

4 (1) Objection to Confirmation. Within the time
5 fixed by the court, any An objection to confirmation
6 of ~~the~~ a plan shall be filed and served in the
7 manner provided in Rule 9014(c)(2) on the debtor,
8 the debtor's attorney, the trustee, the proponent of
9 the plan, and any committee appointed under the
10 Code, ~~and any other entity designated by the court,~~
11 ~~within a time fixed by the court.~~ In a chapter 11
12 reorganization case, Unless the case is a chapter 9
13 municipality case, the objecting party shall
14 transmit a copy of the every objection to
15 ~~confirmation shall be transmitted by the objecting~~
16 ~~party~~ to the United States trustee within the time
17 fixed for filing objections. Discovery may be
18 obtained in the manner provided in Rule 9014(h). An
19 ~~objection to confirmation is governed by Rule 9014.~~

COMMITTEE NOTE

Subdivision (b)(1) is amended to conform to Rule 9014(a) which, as amended, will provide that an objection to confirmation of a plan under this rule is not governed by Rule 9014. Although an objection to confirmation under Rule 3020(b) is not an administrative proceeding under Rule 9014, service of an objection must be made in the manner provided in Rule 9014(c)(2) and discovery may be obtained in

the manner provided in Rule 9014(h).

Deletion of the phrase that provided that the court may designate other entities to receive copies of an objection is intended to avoid the appearance that an objecting party, before serving an objection, must inquire as to the proper parties to be served. This amendment is not intended to deprive the court of the power to require, in a particular case, that a copy of an objection be served on any other entity.

Consistent with the amendments to Rule 9014, a copy of an objection must be served on the debtor's attorney.

The other amendments are stylistic.

**Rule 4001. Relief from Automatic Stay;
Prohibiting or Conditioning the Use,
Sale, or Lease of Property; Use of Cash Collateral;
Obtaining Credit; Agreements**

1 (a) RELIEF FROM STAY; PROHIBITING OR CONDITIONING
2 THE USE, SALE, OR LEASE OF PROPERTY.

3 (1) Procedures Governing Motion. Rule 9014
4 governs a A motion for relief from an automatic stay
5 provided by the Code or a motion to prohibit or
6 condition the use, sale, or lease of property under
7 ~~pursuant to § 363(e) shall be made in accordance~~
8 ~~with Rule 9014 and shall be served on any committee~~
9 ~~elected pursuant to § 705 or appointed pursuant to §~~
10 ~~1102 of the Code or its authorized agent, or, if the~~
11 ~~case is a chapter 9 municipality case or a chapter~~

12 ~~11 reorganization case and no committee of unsecured~~
13 ~~creditors has been appointed pursuant to § 1102, on~~
14 ~~the creditors included on the list filed pursuant to~~
15 ~~Rule 1007(d), and on such other entities as the~~
16 ~~court may direct.~~

17 ****

18 (b) USE OF CASH COLLATERAL.

19 (1) Procedures Governing Motion Motion;
20 Service. Rule 9014 governs a A motion for
21 authorization authority to use cash collateral shall
22 ~~be made in accordance with Rule 9014 and shall be~~
23 ~~served on any entity which has an interest in the~~
24 ~~cash collateral, on any committee elected pursuant~~
25 ~~to § 705 or appointed pursuant to § 1102 of the Code~~
26 ~~or its authorized agent, or, if the case is a~~
27 ~~chapter 9 municipality case or a chapter 11~~
28 ~~reorganization case and no committee of unsecured~~
29 ~~creditors has been appointed pursuant to § 1102, on~~
30 ~~the creditors included on the list filed pursuant to~~
31 ~~Rule 1007(d), and on such other entities as the~~
32 ~~court may direct. Every entity having an interest in~~
33 ~~the cash collateral shall be treated as an entity~~
34 ~~listed in Rule 9014(c)(1).~~

35 ****

36 ~~(3) Notice. Notice of hearing pursuant to this~~
37 ~~subdivision shall be given to the parties on whom~~
38 ~~service of the motion is required by paragraph (1)~~
39 ~~of this subdivision and to such other entities as~~
40 ~~the court may direct.~~

41 (c) OBTAINING CREDIT.

42 (1) Procedure Governing Motion Motion; Service.
43 Rule 9014 governs a A motion for authority to obtain
44 credit ~~shall be made in accordance with Rule 9014~~
45 ~~and shall be served on any committee elected~~
46 ~~pursuant to § 705 or appointed pursuant to § 1102 of~~
47 ~~the Code or its authorized agent, or, if the case is~~
48 ~~a chapter 9 municipality case or a chapter 11~~
49 ~~reorganization case and no committee of unsecured~~
50 ~~creditors has been appointed pursuant to § 1102, on~~
51 ~~the creditors included on the list filed pursuant to~~
52 ~~Rule 1007(d), and on such other entities as the~~
53 ~~court may direct. The motion shall include be~~
54 ~~accompanied by a copy of the agreement relating to~~
55 ~~the credit to be obtained.~~

56 *****

57 ~~(3) Notice. Notice of hearing pursuant to this~~
58 ~~subdivision shall be given to the parties on~~
59 ~~whom service of the motion is required by~~

60 ~~paragraph (1) of this subdivision and to such~~
61 ~~other entities as the court may direct.~~

62 (d) AGREEMENT RELATING TO RELIEF FROM THE AUTOMATIC
63 STAY, PROHIBITING OR CONDITIONING THE USE, SALE, OR
64 LEASE OF PROPERTY, PROVIDING ADEQUATE PROTECTION, USE
65 OF CASH COLLATERAL, ~~AND~~ OR OBTAINING CREDIT.

66 (1) ~~Administrative Proceeding. Motion, Service.~~

67 Except as provided in Rule 4001(d)(3), Rule 9014
68 governs a ~~A~~ motion for approval of an agreement:

- 69 (A) ~~to provide~~ providing adequate
70 protection~~;~~
- 71 (B) ~~to prohibit or condition~~ prohibiting
72 or conditioning the use, sale, or
73 lease of property~~;~~
- 74 (C) ~~to modify or terminate~~ modifying or
75 terminating the stay provided in §
76 362~~;~~
- 77 (D) ~~to use~~ providing for the use of cash
78 collateral~~;~~ or
- 79 (E) consenting to the creation of a lien
80 senior or equal to an existing lien
81 or interest in property of the estate
82 ~~between the debtor and an entity that~~
83 ~~has a lien or interest in property of~~

84 the estate pursuant to which the
85 entity consents to the creation of a
86 lien senior or equal to the entity's
87 lien or interest in such property
88 shall be served on any committee
89 elected pursuant to § 705 or
90 appointed pursuant to § 1102 of the
91 Code or its authorized agent, or, if
92 the case is a chapter 9 municipality
93 case or a chapter 11 reorganization
94 case and no committee of unsecured
95 creditors has been appointed pursuant
96 to § 1102, on the creditors included
97 on the list filed pursuant to Rule
98 1007(d), and on such other entities
99 as the court may direct.

100 (2) Copy of the Agreement. The motion shall be
101 accompanied by include a copy of the agreement.

102 ~~(2) Objection.~~ Notice of the motion and the
103 time within which objections may be filed and served
104 on the debtor in possession or trustee shall be
105 mailed to the parties on whom service is required by
106 paragraph (1) of this subdivision and to such other
107 entities as the court may direct. Unless the court

108 ~~fixes a different time, objections may be filed~~
109 ~~within 15 days of the mailing of notice.~~

110 ~~(3) *Disposition; Hearing.* If no objection is~~
111 ~~filed, the court may enter an order approving or~~
112 ~~disapproving the agreement without conducting a~~
113 ~~hearing. If an objection is filed or if the court~~
114 ~~determines a hearing is appropriate, the court shall~~
115 ~~hold a hearing on no less than five days' notice to~~
116 ~~the objector, the movant, the parties on whom~~
117 ~~service is required by paragraph (1) of this~~
118 ~~subdivision and such other entities as the court may~~
119 ~~direct.~~

120 ~~(4)(3) Procedure For Approval of Agreement~~
121 ~~Agreement in Settlement of Motion. The court may~~
122 ~~direct that the procedures prescribed in Rule~~
123 ~~4001(d)(1) and (2) do paragraphs (1), (2), and (3)~~
124 ~~of this subdivision shall not apply, and that an the~~
125 ~~agreement of the kind listed in Rule 4001(d)(1) may~~
126 ~~be approved without further notice, if the court~~
127 ~~determines that a motion made under Rule 4001(a),~~
128 ~~(b) or (c) pursuant to subdivisions (a), (b), or ©~~
129 ~~of this rule was sufficient to afford reasonable~~
130 ~~notice of the material provisions of the agreement~~
131 ~~and an opportunity to be heard.~~

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014. The list of parties entitled to service of the motion and notice of the hearing is deleted from Rule 4001(a), (b), and (c), because Rule 9014(c)(1) lists the entities that must be served. Other amendments are stylistic.

Rule 6004. Use, Sale, or Lease of Property

1 (a) NOTICE OF PROPOSED USE, SALE, OR LEASE OF
2 PROPERTY. Notice of a proposed use, sale, or lease of
3 property, other than cash collateral, not in the
4 ordinary course of business shall be given in
5 accordance with ~~pursuant to~~ Rule 2002(a)(2), (c)(1),
6 (i), and (k) and, if applicable, in accordance with §
7 363(b)(2) of the Code. The notice may include a date
8 for a hearing to be held if a timely objection is
9 filed.

10 (b) OBJECTION TO PROPOSAL. Except as provided in
11 Rule 6004(c) or (d) ~~subdivisions (c) and (d) of this~~
12 ~~rule~~, an objection to a proposed use, sale, or lease of
13 property ~~shall~~ may be filed and served ~~not~~ no less than
14 five days before the date set for the proposed action
15 or within the time fixed by the court. The objection
16 shall be served on the entities listed in Rule
17 9014(c)(1). If a timely objection is filed and served,

18 the notice sent under Rule 6004(a) is treated as a
19 motion for authority to use, sell, or lease the
20 property, the objection is treated as a response, and
21 Rule 9014 governs the proceeding. If the notice does
22 not include a hearing date, a hearing date shall be
23 included in the objection. An objection to the
24 proposed use, sale, or lease of property is governed by
25 Rule 9014.

26 (c) SALE FREE AND CLEAR OF LIENS AND OTHER
27 INTERESTS. Rule 9014 governs a ~~A~~ motion for authority
28 to sell property free and clear of liens or other
29 interests ~~shall be made in accordance with Rule 9014~~
30 ~~and shall be served on the parties who have liens or~~
31 ~~other interests in the property to be sold.~~ The notice
32 required by Rule 6004(a) subdivision (a) of this rule
33 shall include the date of the hearing on the motion and
34 the time within which objections may be filed and
35 ~~served on the debtor in possession or trustee.~~ An
36 objection is treated as a response to a motion under
37 Rule 9014(d)

38 (d) SALE OF PROPERTY VALUED UNDER \$2,500.
39 ~~Notwithstanding subdivision (a) of this rule, when~~ If
40 all of the nonexempt property of the estate has an
41 aggregate gross value less than \$2,500, it shall be

42 sufficient to give all creditors, indenture trustees,
43 committees appointed or elected under the Code, the
44 United States trustee and other persons as the court
45 may direct a general notice of intent to sell such the
46 property other than in the ordinary course of business
47 ~~to all creditors, indenture trustees, committees~~
48 ~~appointed or elected pursuant to the Code, the United~~
49 ~~States trustee and other persons as the court may~~
50 ~~direct. A party may object to the proposed sale An~~
51 ~~objection to any such sale may be filed and served by a~~
52 ~~party in interest within 15 days after of the mailing~~
53 ~~of the notice is mailed, or within the time fixed by~~
54 the court. An objection is governed by Rule 9014.

55 ~~(e) HEARING. If a timely objection is made pursuant~~
56 ~~to subdivision (b) or (d) of this rule, the date of the~~
57 ~~hearing thereon may be set in the notice given pursuant~~
~~to subdivision (a) of this rule.~~

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014. Although the trustee or debtor in possession who sends a notice of proposed use, sale, or lease of property under § 363(b) does not need to obtain a court order and is not required to file a motion, if a timely objection is filed the notice is treated as a motion and the objection is treated as a response in a proceeding governed by Rule 9014.

The procedure is different if the property is to be sold free and clear of liens and other interests. The trustee or debtor in possession that wants to sell the property must file and serve a motion for authorization to sell it free and clear of liens and other interests. Notice of the proposed sale must be sent to all creditors and others under Rule 2002(a) and (c)(1), and the motion must be served in accordance with Rule 9014(c). An objection to the proposed sale is treated as a response to the motion, which is governed by Rule 9014.

Other amendments, including the rearranging of subdivisions, are stylistic.

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

1 (a) PROCEEDING TO ASSUME, REJECT, OR ASSIGN. A
2 proceeding to assume, reject, or assign an executory
3 contract or unexpired lease, other than as part of a
4 plan, is governed by Rule 9014. The other party to the
5 contract or lease shall be treated as an entity listed
6 in Rule 9014(c)(1).

7 (b) PROCEEDING TO REQUIRE TRUSTEE TO ACT. A
8 proceeding by a party to an executory contract or
9 unexpired lease in a chapter 9 municipality case,
10 chapter 11 reorganization case, chapter 12 family
11 farmer's debt adjustment case, or chapter 13
12 individual's debt adjustment case, to require the
13 trustee, debtor in possession, or debtor to determine
14 whether to assume or reject the contract or lease is
15 governed by Rule 9014. The other party to the contract
16 or lease shall be treated as an entity listed in Rule
17 9014(c)(1).

18 ~~(c) NOTICE. Notice of a motion made pursuant to~~
19 ~~subdivision (a) or (b) of this rule shall be given to~~
20 ~~the other party to the contract or lease, to other~~
21 ~~parties in interest as the court may direct, and,~~
22 ~~except in a chapter 9 municipality case, to the United~~
23 ~~States trustee.~~

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rules 9014 and 9034. Subdivision (c) is deleted as unnecessary. Rule 9014(c)(1) lists the entities entitled to receive the motion papers and Rule 9034 requires transmittal of the motion papers to the United States trustee.

**Rule 6007. Abandoning or Disposing
~~Abandonment or Disposition of Property~~**

1 (a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION;
2 ~~OBJECTION OBJECTIONS, HEARING.~~ Unless the court directs
3 ~~otherwise directed by the court,~~ the trustee or debtor
4 in possession shall give notice of a proposed
5 abandonment or disposition of property to the United
6 States trustee, all creditors, indenture trustees, and
7 committees elected ~~pursuant to~~ under § 705 or appointed
8 ~~pursuant to~~ under § 1102 of the Code. A party in
9 interest may file an objection to the proposed
10 abandonment or disposition no later than 15 days after
11 the notice is mailed and ~~serve an objection within 15~~
12 ~~days of the mailing of the notice,~~ or within the time
13 fixed by the court. ~~If a timely objection is made, the~~
14 ~~court shall set a hearing on notice to the United~~
15 ~~States trustee and to other entities as the court may~~
16 ~~direct.~~ The objection is treated as a motion governed

17 by Rule 9014.

18 (b) MOTION BY PARTY IN INTEREST. A party in interest
19 may file and serve a motion to require ~~requiring~~ the
20 trustee or debtor in possession to abandon property of
21 the estate. Rule 9014 governs the motion.

COMMITTEE NOTE

This rule is amended to provide that an objection to a proposed abandonment or disposition of property is governed by Rule 9014. The objection is made by filing and serving a motion in accordance with Rule 9014 before the time for objecting expires. Other amendments are stylistic.

Rule 9006. Time

1 (d) FOR MOTIONS RELATING TO A PENDING ADVERSARY
2 PROCEEDING OR ADMINISTRATIVE PROCEEDING ~~— AFFIDAVITS.~~
3 A written motion made in an adversary proceeding under
4 Part VII of these rules or a written motion of the type
5 described in Rule 9014(a)(4), other than one which may
6 be heard ex parte, and notice of any hearing shall be
7 served ~~not~~ no later than five days before the time
8 specified for the ~~such~~ hearing, unless a different

9 period is fixed by these rules or by ~~order~~ of the
10 court. ~~Such an order may for cause shown be made on ex~~
11 ~~parte application. For cause shown, the order fixing a~~
12 ~~different period may be made on ex parte application.~~
13 When ~~a~~ the motion is supported by affidavit, the movant
14 shall serve the affidavit ~~shall be served~~ with the
15 motion. ~~; and, except as otherwise~~ Except as provided
16 in Rule 9023, opposing affidavits may be served ~~not~~ no
17 later than one day before the hearing, unless the court
18 permits them to be served at some other time.

COMMITTEE NOTE

Subdivision (d) is amended to limit it to motions made within adversary proceedings under Part VII of these rules, and to procedural or dispositive motions relating to pending administrative proceedings under Rule 9014. The time limits set forth in Rule 9006(d) do not apply if the motion is governed by another rule that fixes different time periods. For example, a motion for summary judgment under Rule 7056, which applies in an administrative proceeding under Rule 9014(1), is governed by the time periods fixed by Rule 56 F.R.Civ.P., rather than by Rule 9006(d).

Rule 9013. Application for an Order Motions: Form and Service

1 (a) SCOPE OF THIS RULE. This rule governs a request
2 for an order relating to any of the following:

- 3 (1) payment of income to a trustee under §
4 1225(c) or 1325(c) of the Code;
- 5 (2) joint administration under Rule 1015;
- 6 (3) conversion of a case under § 706(a) or
7 § 1112(a);
- 8 (4) dismissal of a case under § 1208(b) or
9 § 1307(b);
- 10 (5) approval of the appointment of an examiner
11 or trustee in a chapter 11 case under §
12 1104 and in accordance with Rule 2007.1;
- 13 (6) enlargement of time under Rule 9006(b) if
14 the request is made before the original or
15 enlarged period has expired other than an
16 order enlarging the time to take action
17 under Rule 1007(c), 1017(e), 3015(a),
18 4003(b), 4004(a), 4007(c), 8002, or 9033;
- 19 (7) form of, manner of sending, or publication
20 of a notice in a chapter 7, chapter 12, or
21 chapter 13 case;
- 22 (8) notice to a committee under Rule 2002(i);
- 23 (9) notice under Rule 9020(b);
- 24 (10) examination of an entity under Rule 2004;
- 25 (11) deferral of the entry of an order granting
26 a discharge under Rule 4004(c);

- 27 (12) reopening a case under § 350(b);
28 (13) conditional approval of a disclosure
29 statement under Rule 3017.1; and
30 (14) protection of a secret, confidential,
31 scandalous, or defamatory matter under Rule
32 9018.

33 (b) REQUEST FOR RELIEF. A request for an order
34 governed by this rule shall be made by application.
35 The application shall be in writing, unless it is made
36 orally at a status conference or hearing at which all
37 parties entitled to notice of the application are
38 present. The application shall:

- 39 (1) state with particularity the relief sought
40 and the grounds for that relief; and
41 (2) if in writing, be accompanied by proof of
42 service under Rule 9013(c) and by a
43 proposed order for the relief requested.

44 (c) SERVICE OF APPLICATION. No later than the time
45 when a written application is filed, the applicant
46 shall serve a copy of the application, any paper filed
47 with the application, and the proposed order on the
48 debtor, the debtor's attorney, the trustee, any
49 committee elected under § 705 or appointed under §
50 1102, and any other entity required by federal law or

51 these rules, and shall transmit a copy to the United
52 States trustee. Service shall be made in the manner
53 provided in Rule 7004 for service of a summons, but the
54 court by local rule may permit the notice to be served
55 by electronic means that are consistent with technical
56 standards, if any, that the Judicial Conference of the
57 United States establishes.

58 (d) NO RESPONSE REQUIRED; ORDER WITHOUT A HEARING.
59 A response to the application is not required, and the
60 court may order relief without a hearing.

61 (e) SERVICE OF ORDER. If the court issues an order,
62 the clerk shall serve a copy on the applicant, the
63 entities listed in Rule 9013(c), and any other entity
64 as the court directs.

65 ~~A request for an order, except when an application~~
66 ~~is authorized by these rules, shall be by written~~
67 ~~motion, unless made during a hearing. The motion shall~~
68 ~~state with particularity the grounds therefor, and~~
69 ~~shall set forth the relief or order sought. Every~~
70 ~~written motion other than one which may be considered~~
71 ~~ex parte shall be served by the moving party on the~~
72 ~~trustee or debtor in possession and on those entities~~
73 ~~specified by these rules or, if service is not required~~
74 ~~or the entities to be served are not specified by these~~

75 ~~rules, the moving party shall serve the entities the~~
76 ~~court directs.~~

COMMITTEE NOTE

Rules 9013 and 9014 have been amended to substantially revise the rules governing motion practice in bankruptcy cases.

Rule 9013 is amended to govern a category of procedures, called "applications," that relate to certain enumerated matters which, in most instances, are nonsubstantive and noncontroversial. This rule, as amended, is designed to enable parties to obtain court orders relating to these matters in a relatively short period of time. This rule does not preclude any party from requesting appropriate relief after an application is granted and an order is entered. See, e.g., Rule 9024.

These amendments provide greater detail relating to procedures for obtaining the enumerated types of orders. They are intended to increase uniformity in litigation practice among districts and to reduce the necessity for local rules governing these matters.

In most situations, a request to enlarge a time period under these rules is noncontroversial and may be made under Rule 9013. But the enlargement of time to take certain action under these rules may be controversial and, therefore, warrant the procedural safeguards afforded in an administrative proceeding under Rule 9014. In particular, a request for an order enlarging the time to file a motion to dismiss a chapter 7 case under § 707(b) and Rule 1017(e), to file a chapter 12 plan in accordance with Rule 3015(a), to file an objection to the list of property claimed as exempt in accordance with Rule 4003(b), to file a complaint objecting to discharge under Rule 4004(a), to file a complaint to determine the dischargeability of a debt under § 523(c) and Rule 4007(c), to file a notice of appeal under Rule 8002, or to file an objection to proposed findings of fact and conclusions of law under Rule 9033, is

an administrative proceeding governed by Rule 9014. In contrast, a request for an order enlarging the time to file schedules and statements is governed by Rule 1007(c), rather than 9013 or Rule 9014, so that the order may be issued without any notice.

Rule 9014. Administrative Proceeding Contested Matters

- 1 (a) SCOPE OF THIS RULE. This rule governs any
2 request for an order other than the following:
- 3 (1) a petition commencing a case under § 301,
4 302, or 303 of the Code, or a petition
5 commencing a case ancillary to a foreign
6 proceeding under § 304;
- 7 (2) a proceeding or request for relief of the
8 type described in Rule 1006(b), 1006(c),
9 1007(c), 1010, 1011, 1013, 1017(e)(2),
10 1018, 2014, 3015(f), 3017, 3020(b),
11 4001(a)(2), 7001, or 9013(a);
- 12 (3) a motion made in an adversary proceeding
13 under Part VII of these rules;
- 14 (4) a motion that addresses only a procedural
15 matter relating to, or a dispositive motion
16 within, a pending administrative
17 proceeding, except as provided in Rule
18 9014(h) or Rule 9014(m);
- 19 (5) a motion under Part VIII of these rules or

20 any motion relating to an appeal to the
21 district court or the bankruptcy appellate
22 panel.

23 (b) REQUEST FOR RELIEF. A request for an order
24 governed by this rule shall be made by written motion
25 entitled "administrative motion." The motion shall:

26 (1) state with particularity the relief sought
27 and the grounds for that relief;

28 (2) be accompanied by proof of service and by a
29 proposed order for the relief requested;

30 and

31 (3) unless the movant is an individual debtor
32 whose debts are primarily consumer debts,
33 be accompanied by:

34 (A) one or more supporting affidavits;
35 and

36 (B) if the value of property is an issue,
37 a valuation report has been prepared,
38 and the movant intends to introduce
39 the valuation report as evidence, a
40 copy of that report, with the name,
41 address, and telephone number of the
42 person who prepared it.

43 (c) SERVICE OF MOTION AND NOTICE OF HEARING.

44 (1) Except as provided in Rule 3007 or 9014(f),
45 at least 20 days before the hearing date,
46 the movant shall serve a copy of the
47 administrative motion, a copy of any paper
48 filed with it, and notice of the hearing on
49 the following:
50 (A) any entity against whom relief is
51 sought;
52 (B) the debtor;
53 (C) the debtor's attorney;
54 (D) the trustee;
55 (E) any committee elected under § 705 or
56 appointed under § 1102, or, if the
57 case is a chapter 9 case or a chapter
58 11 case and no committee of unsecured
59 creditors has been appointed, on the
60 creditors included in the list filed
61 under Rule 1007(d);
62 (F) any entity that has a lien on or
63 other interest in property if the
64 lien or interest may be affected by
65 the requested relief; and
66 (G) any other entity entitled to service
67 by federal law or these rules.

68 (2) Service shall be made in the manner
69 provided in Rule 7004 for service of a
70 summons, but the court by local rule may
71 permit service by electronic means that are
72 consistent with technical standards, if
73 any, that the Judicial Conference
74 establishes.

75 (3) The notice of the hearing shall conform to
76 any appropriate Official Form and shall
77 include:

78 (A) the date, time, and place of the
79 hearing;

80 (B) the time to file a response; and

81 (C) a statement that if a response is not
82 timely filed, the court may grant the
83 motion without a hearing.

84 (d) RESPONSE.

85 (1) A response to an administrative motion may
86 be filed no later than 5 days before the
87 hearing date.

88 (2) No later than the time when a response is
89 filed, the responding party shall serve a
90 copy of the response on the movant and the
91 entities listed in Rule 9014(c)(1) in the

92 manner prescribed by Rule 9014(c)(2).

93 (3) A response shall be accompanied by proof of
94 service and, unless the respondent is an
95 individual debtor whose debts are primarily
96 consumer debts, by:

97 (A) a proposed order for the relief
98 requested;

99 (B) one or more supporting affidavits if
100 there is a factual dispute;

101 (C) if the value of property is an issue,
102 a valuation report has been prepared,
103 and the respondent intends to
104 introduce the valuation report as
105 evidence, a copy of that report with
106 the name, address, and telephone
107 number of the person who prepared it.

108 (e) AFFIDAVITS. An affidavit filed in an
109 administrative proceeding shall comply with Rule 56(e)
110 F.R.Civ.P.

111 (f) INTERIM RELIEF. If a request for interim relief
112 is included in an administrative motion, the movant
113 shall take reasonable steps to provide all parties with
114 the most expeditious service and notice of a
115 preliminary hearing feasible and shall file an

116 affidavit specifying the efforts made. If a response
117 is filed before the preliminary hearing, the respondent
118 shall take reasonable steps to provide all parties with
119 the most expeditious service and notice feasible before
120 the preliminary hearing. At the preliminary hearing,
121 the court shall determine the adequacy of the notice
122 under the circumstances. Interim relief may be granted
123 under Rule 4001(b)(2) or Rule 4001(c)(2), to the extent
124 and under the conditions stated in those rules.

125 (g) ORDER WITHOUT A HEARING. If no response is
126 timely filed, the court may order relief without a
127 hearing to the extent provided in § 102(1), or may
128 notify the movant, and any other entity the court
129 considers appropriate, that a hearing will be held.

130 (h) DISCOVERY. Unless the court directs otherwise,
131 Rules 26 and 28-37 F.R.Civ.P. apply, except that:

- 132 (1) the parties are not required to make the
133 disclosures mandated by Rule 26(a)(1)-(3),
134 F.R.Civ.P., other than as provided in Rule
135 9014(b) and (d), but the information
136 described in Rule 26(a)(1)-(3) F.R.Civ.P.
137 may be obtained by discovery methods
138 prescribed by Rule 26(a)(5) F.R.Civ.P.;
139 (2) the parties are not required to meet in

140 accordance with Rule 26(f) F.R.Civ.P.;
141 (3) the time periods provided in Rules 30(e),
142 33(b)(3), 34(b), and 36(a) F.R.Civ.P. are
143 reduced to 10 days or as directed by the
144 court; and
145 (4) the movant may begin discovery only after a
146 response is filed or a respondent begins
147 discovery. A respondent may begin
148 discovery at any time.

149 (i) HEARING; STATUS CONFERENCE.

150 (1) HEARING.

151 (A) Except as provided in Rule
152 9014(i)(1)(B) or (3), if a timely
153 response to an administrative motion
154 is filed, the court shall hold a
155 hearing to determine whether there is
156 a genuine issue as to any material
157 fact and, if not, whether any party
158 is entitled to relief as a matter of
159 law. No testimony may be taken at
160 the hearing, unless the movant and
161 all respondents consent. If the
162 court finds that there is no genuine
163 issue as to any material fact, it

164 shall order appropriate relief. If
165 the court finds that there is a
166 genuine issue of material fact, it
167 shall conduct a status conference.

168 (B) On request or on its own initiative
169 and on reasonable notice to the
170 parties, the court may order that an
171 evidentiary hearing at which
172 witnesses may testify shall be held
173 on the scheduled hearing date.

174 (2) STATUS CONFERENCE. A status conference
175 under Rule 9014(i)(1)(A) may be held at the
176 time fixed for the hearing, or immediately
177 afterward without further notice to the
178 parties. The attorneys for the movant and
179 for every party against whom relief is
180 sought that filed a timely response, and
181 every party not represented by an attorney,
182 shall appear and participate at the status
183 conference. The purpose of the status
184 conference is to expedite the disposition
185 of the administrative proceeding. The
186 court may enter a pretrial order requiring
187 the disclosure of information of the type

188 described in Rule 26(a)(1)-(3) F.R.Civ.P.,
189 scheduling pretrial discovery, fixing the
190 time for a hearing on factual issues, and
191 otherwise providing for the just, speedy,
192 and economical disposition of the
193 proceeding.

194 (3) RELIEF FROM AUTOMATIC STAY; PRELIMINARY
195 HEARING ON USE OF CASH COLLATERAL OR
196 OBTAINING CREDIT. If an administrative
197 motion requests relief from an automatic
198 stay of any act against property of the
199 estate under § 362(d), or includes a
200 request for a preliminary hearing as
201 provided in Rule 4001(b)(2) or (c)(2), a
202 hearing at which witnesses may testify may
203 be held at the time fixed for the hearing.

204 (j) TESTIMONY OF WITNESSES. Rule 43(e) F.R.Civ.P.
205 does not apply at an evidentiary hearing on an
206 administrative motion.

207 (k) SERVICE OF NOTICE THAT ORDER HAS BEEN ENTERED.
208 Notice of the entry of any order shall be served in
209 accordance with Rule 9022 on the movant, the entities
210 listed in Rule 9014(c)(1), and any other entity as the
211 court directs.

212 (l) APPLICATION OF PART VII RULES. Unless the court
213 orders otherwise, the following rules apply in an
214 administrative proceeding: Rules 7009, 7017, 7019-
215 7021, 7025, 7041, 7042, 7052, 7054-7056, 7064, 7069,
216 and 7071. The court may at any stage in a particular
217 matter order that one or more of the other rules in
218 Part VII apply. The court shall give the parties
219 notice of any order issued under this paragraph to
220 afford them a reasonable opportunity to comply with the
221 procedures made applicable by the order.

222 (m) PROCEDURAL OR DISPOSITIVE MOTION RELATING TO
223 PENDING ADMINISTRATIVE PROCEEDING. Rule 7(b)(1)
224 F.R.Civ.P. and Rule 9006(d) apply to a motion that
225 addresses only a procedural matter relating to, or a
226 dispositive motion made within, a pending
227 administrative proceeding.

228 (n) TRANSMISSION TO UNITED STATES TRUSTEE. A copy of
229 every paper filed and every order entered in connection
230 with an administrative proceeding shall be transmitted
231 to the United States trustee if required by Rule 9034.

232 (o) RELIEF FROM PROCEDURAL REQUIREMENTS. The court
233 for cause may order that any procedural requirement
234 provided in this rule shall not apply or shall be
235 amended in a particular proceeding. The court shall

236 give the parties notice of the order to afford them a
237 reasonable opportunity to comply with any amended
238 procedural requirements.

239 ~~In a contested matter in a case under the Code not~~
240 ~~otherwise governed by these rules, relief shall be~~
241 ~~requested by motion, and reasonable notice and~~
242 ~~opportunity for hearing shall be afforded the party~~
243 ~~against whom relief is sought. No response is required~~
244 ~~under this rule unless the court orders an answer to a~~
245 ~~motion. The motion shall be served in the manner~~
246 ~~provided for service of a summons and complaint by Rule~~
247 ~~7004, and, unless the court otherwise directs, the~~
248 ~~following rules shall apply: 7021, 7025, 7026, 7028-~~
249 ~~7037, 7041, 7042, 7052, 7054-7056, 7062, 7064, 7069,~~
250 ~~and 7071. The court may at any stage in a particular~~
251 ~~matter direct that one or more of the other rules in~~
252 ~~Part VII shall apply. An entity that desires to~~
253 ~~perpetuate testimony may proceed in the same manner as~~
254 ~~provided in Rule 7027 for the taking of a deposition~~
255 ~~before an adversary proceeding. The clerk shall give~~
256 ~~notice to the parties of the entry of any order~~
257 ~~directing that additional rules of Part VII are~~
258 ~~applicable or that certain of the rules of Part VII are~~
259 ~~not applicable. The notice shall be given within such~~

260 ~~time as is necessary to afford the parties a reasonable~~
261 ~~opportunity to comply with the procedures made~~
262 ~~applicable by the order.~~

COMMITTEE NOTE

Rules 9013 and 9014 have been amended to substantially revise the rules governing motion practice in bankruptcy cases.

Rule 9014 had been limited to the category of disputes called "contested matters." Confusion as to whether a particular motion was a contested matter, rather than a different type of proceeding, and uncertainty as to the procedural requirements relating to a contested matter, have led to the amendment of this rule.

These amendments provide more detailed procedural guidance than provided in the past. This change is intended to increase uniformity in litigation practice among districts and to reduce the number of local rules.

This rule, as amended, governs a proceeding that is not an application (governed by Rule 9013), an adversary proceeding (governed by Part VII), a request to pay the filing fee in installments or to waive the filing fee (governed by Rule 1006), a request for an extension of time to file schedules and statements (governed by Rule 1007(c)), a proceeding commenced on the court's own initiative to dismiss a case for substantial abuse of chapter 7 (governed by Rule 1017(e)(2)), a motion for an order approving the employment of a professional person (governed by Rule 2014), or a request for an order approving a disclosure statement or confirming a plan (governed by Rule 3015(f), 3017, or 3020(b)).

A motion made in either a pending adversary proceeding or in a pending administrative proceeding -- such as a motion for summary judgment, a motion to dismiss, or a motion for a protective order relating to discovery -- is not an administrative

proceeding governed by this rule. However, a procedural or dispositive motion relating to a pending administrative proceeding is governed by Rule 9014(m) and a motion relating to discovery is governed by Rule 9014(h). Any motion made in connection with an appeal to the district court or bankruptcy appellate panel (including a motion for a stay pending appeal, a motion for leave to appeal, or any motion under a rule in Part VIII) is excluded from the scope of Rule 9014.

Rule 9014(a) also clarifies that this rule does not apply to a petition commencing a case under the Code (governed by §§ 301-303 of the Code and Rules 1002-1005, 1010, 1011, 1013, and 1018), or a petition commencing a case ancillary to a foreign proceeding (governed by § 304 of the Code and Rules 1002, 1005, 1010, 1011, and 1018).

Numerous rules require or refer to the filing of a motion for certain relief. Unless the motion to which the rule refers is of the type listed in Rule 9014(a) as being outside the scope of this rule, the motion would commence an administrative proceeding and would be governed by Rule 9014. For example, Rule 3008 provides that a party in interest "may move for reconsideration of an order allowing or disallowing a claim against the estate." A motion requesting reconsideration under Rule 3008 commences an administrative proceeding and is governed by Rule 9014.

The amendments also increase certain time periods relating to these types of proceedings. For example, current Rule 9006(d) -- which formerly applied in contested matters -- provides that a motion and notice of hearing must be served at least 5 days before the scheduled hearing date. In contrast, amended Rule 9014 provides for service at least 20 days before the date scheduled for the hearing. This time period may be enlarged in accordance with Rules 9006(b) and 9013, or reduced in accordance with Rule 9006(c) or Rule 9014(o). The three-day "mail rule" under Rule 9006(f) does not apply with respect to these time periods because the time for acting in accordance with this rule is not triggered by service of any notice or other paper.

The amendments provide that a response may be filed no later than 5 days before the scheduled hearing date. See Rule 9014(d). It is important for practitioners to be aware of Rule 9006(a), which provides that time periods in the rules that are less than 8 days are determined without including in the computation intervening Saturdays, Sundays, and legal holidays.

Rule 9014(c) requires service of both the administrative motion and notice of the hearing, but there is no requirement that the motion and notice of hearing be in separate documents.

The court may order appropriate relief without a hearing if a timely response is not filed. If the judge wants to hold a hearing nonetheless, subdivision (g) requires that the court notify the movant that a hearing will be held. The court may hold the hearing at the originally scheduled time or on a subsequent date.

A hearing must be held if a response is filed. But, attorneys and unrepresented parties do not have to bring witnesses to the hearing unless (1) the proceeding is for relief from the automatic stay of acts against property of the estate, (2) the proceeding is for preliminary authority to use cash collateral or to obtain credit, or (3) the court gives reasonable notice to the parties that an evidentiary hearing may be held on the date when the hearing is scheduled. Otherwise, if a response is filed, the court will hold a hearing only for purposes of determining whether an evidentiary hearing is necessary to resolve questions of fact and, if an evidentiary hearing is not necessary, to resolve the proceeding. If an evidentiary hearing is needed, the court will hold a status conference under Rule 9014(i)(2) to facilitate settlement discussions, set a discovery schedule, schedule an evidentiary hearing, or formulate any other pretrial order designed to expedite the proceeding. It is anticipated that the status conference will be held immediately following the court's determination that there is a genuine issue of material fact and, therefore, attorneys and unrepresented parties should attend the hearing prepared for an immediate status conference. Subdivision (i) does not preclude

the court from ordering a status conference under Rule 105(d).

If the court determines based on affidavits that there are genuine issues of material fact, and an evidentiary hearing is held to resolve the issues, witnesses must testify orally in open court in accordance with Rule 9017 and Civil Rule 43(a). Under Rule 9014(j), the court may not resolve these factual issues based on affidavits.

The amendments also require automatic disclosure regarding valuation reports when the value of property is at issue, the report has been prepared, and the party intends to introduce it as evidence. As used in this rule, the term "valuation report" includes a formal appraisal of the property, as well as any less formal written report on the value of the property.

Any party that files a paper in connection with an administrative proceeding is required to transmit a copy to the United States trustee, if the proceeding relates to any of the matters listed in Rule 9034.

Subdivision (o) gives the court discretion to order, for cause and in a particular proceeding, that any procedural requirement under this rule does not apply or is amended. But the requirements of this rule may not be abrogated by local rule or general order. The court for cause shown may enlarge or reduce any time periods prescribed by this rule in accordance with Rule 9006.

Rule 9017. Evidence

1 Except as provided in Rule 9014(j), The Federal
2 Rules of Evidence and Rules 43, 44 and 44.1 F.R. Civ.
3 P. apply in cases under the Code.

COMMITTEE NOTE

This rule is amended to conform to Rule 9014(j), which provides that Rule 43(e) F.R. Civ. P. does not apply at an evidentiary hearing in an administrative proceeding. The effect of Rule 9014(j) is that a witness must testify in open court, rather than by affidavit, at an evidentiary hearing in an administrative proceeding governed by Rule 9014.

Rule 9021. Entry of Judgment

1 Except as otherwise provided ~~herein~~ in this rule,
2 Rule 58 F.R. Civ. P. applies in cases under the Code.
3 Every judgment entered in an adversary proceeding or
4 ~~contested matter~~ in an administrative proceeding shall
5 be set forth on a separate document. A judgment is
6 effective when entered as provided in Rule 5003. The
7 reference in Rule 58 F.R. Civ. P. to Rule 79(a) ~~F.R.~~
8 ~~Civ. P.~~ shall be read as a reference to Rule 5003 of
9 these rules.

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014.

Rule 9034. Transmittal of Pleadings, Motion Papers, Objections, and Other Papers to the United States Trustee

1 Unless the United States trustee requests otherwise
2 or the case is a chapter 9 municipality case, an any

3 entity that files a pleading, motion, objection, or
4 similar paper relating to any of the following matters
5 shall transmit a copy thereof to the United States
6 trustee within the time required by these rules for
7 service of the paper:

8 (a) a proposed use, sale, or lease of property
9 of the estate other than in the ordinary
10 course of business;

11 **(b) a rejection, assumption, or assignment of**
12 **an executory contract or unexpired lease;**

13 ~~(b)~~(c) the approval of a compromise or
14 settlement of a controversy;

15 ~~(c)~~(d) the dismissal of a case, transfer of case
16 to another district, or conversion of a
17 case to another chapter;

18 ~~(d)~~(e) the employment of a professional person
19 persons;

20 ~~(e)~~(f) an application for compensation or
21 reimbursement of expenses;

22 ~~(f)~~(g) a motion for, or approval of an agreement
23 relating to, the use of cash collateral or
24 authority to obtain credit;

25 **(h) the appointment of an interim trustee**
26 **before an order for relief in an**

27 involuntary case;
28 ~~(g)~~(i) the election of a trustee or the
29 appointment of a trustee or examiner in a
30 chapter 11 reorganization case;
31 ~~(j)~~ a review of the appointment of a creditors'
32 committee ;
33 ~~(h)~~(k) the approval of a disclosure statement;
34 ~~(i)~~(l) the confirmation of a plan;
35 ~~(j)~~(m) an objection to, or the waiver or
36 revocation of, the debtor's discharge;
37 ~~(k)~~(n) any other matter ~~in which~~ when the United
38 States trustee requests ~~copies~~ a copy of
39 filed papers or the court orders ~~copies~~ a
40 copy transmitted to the United States
41 trustee.

COMMITTEE NOTE

Several rules have contained provisions requiring that notice of a hearing on a particular matter be transmitted to the United States trustee. See, e.g., Rules 1014, 2001(a), 2007(a), 4001, and 6007. Those provisions have been deleted and replaced with the additional matters added to the list in Rule 9034. In addition, the election of a chapter 11 trustee under § 1104 is added to the list in this rule so that the United States trustee will receive all papers relating to the election. Other amendments are stylistic.

C. Proposed Amendments to Bankruptcy Rules 1007, 1017, 2002, 4003, 4004, and 5003 Submitted for Approval to Publish.

1. *Synopsis of Proposed Amendments.*

(a) Rule 1007(m) is amended to provide that, if a governmental unit is a creditor, the debtor is required to identify in the lists and schedules filed under this rule the applicable department, agency, or instrumentality of the governmental unit, if known to the debtor. This amendment is designed to facilitate more effective notice to governmental creditors.

(b) Rule 1017(e) is amended to permit the court to grant a timely request for an extension of time to file a motion to dismiss a chapter 7 case under §707(b), whether the court rules on the request before or after the expiration of the 60-day time limit for filing the extension request.

(c) Rule 2002(j) is amended to require that the address of any notice mailed to the United States attorney under this paragraph identify the particular department, agency, or instrumentality through which the debtor is indebted to the United States. This amendment is designed to better enable the United States attorney to direct notices to the appropriate governmental officials.

(d) Rule 4003(b) is amended to permit the court to grant a timely request for an extension of time to object to a list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day time limit for filing an objection.

(e) Rule 4004(c)(1) is amended to delay the granting of a discharge in a chapter 7 case while a motion for an extension of time to file a motion to dismiss the case under § 707(b) is pending.

(f) Rule 5003 is amended to permit the United States and the state in which the court is located to file statements designating safe harbor mailing addresses for notice purposes. The amendment requires the clerk to maintain a register of these addresses. Failure to use a mailing address in the register does not invalidate any notice that is otherwise effective under applicable law.

2. *Text of Proposed Amendments to Rules 1007, 1017, 2002, 4003, 4004, and 5003.*

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

1 (m) Identifying a Governmental Unit. If the debtor
2 lists a governmental unit as a creditor in any list or
3 schedule filed under Rule 1007, the debtor shall
4 identify, if known to the debtor, any department,
5 agency, or instrumentality of the governmental unit
6 through which the debtor is indebted. Failure to
7 comply with this paragraph does not affect the debtor's
8 legal rights.

COMMITTEE NOTE

Governmental units, including federal, state and municipal governments, may have difficulty or may experience delay in identifying the particular department or agency through which a debt is owed. To facilitate earlier and more effective participation by governmental units who are creditors in bankruptcy cases, Rule 1007(m) has been added to require the debtor to identify in the lists and schedules filed under this rule the particular department, agency, or instrumentality of the governmental unit through which the debtor is indebted, if the debtor knows this information. But if the debtor fails to comply with this requirement, such failure does not affect the debtor's legal rights.

Rule 1017. Dismissal or Conversion of Case; Suspension

1
2 (e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S CHAPTER
3 7 CASE FOR SUBSTANTIAL ABUSE. The court may dismiss an
4 individual debtor's case for substantial abuse under §
5 707(b) only on motion by the United States trustee or
6 on the court's own motion and after a hearing on notice
7 to the debtor, the trustee, the United States trustee,
8 and any other entities as the court directs.

9 (1) A motion to dismiss a case for substantial
10 abuse may be filed by the United States
11 trustee only within 60 days after the first
12 date set for the meeting of creditors under
13 § 341(a), unless, on request filed by the
14 United States trustee before the time has
15 expired, the court for cause extends the
16 time for filing the motion to dismiss. The
17 United States trustee shall set forth in
18 the motion all matters to be submitted to
19 the court for its consideration at the
20 hearing.

COMMITTEE NOTE

This rule is amended to permit the court to grant a timely request filed by the United States trustee for an extension of time to file a motion to dismiss a chapter 7 case under § 707(b), whether the

court rules on the request before or after the expiration of the 60-day period.

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

1 (a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST.

2 Except as provided in subdivisions (h), (i), and (l) of
3 this rule, the clerk, or some other person as the court
4 may direct, shall give the debtor, the trustee, all
5 creditors and indenture trustees at least 20 days'
6 notice by mail of:

7 ****

8 (6) ~~hearings on all applications for~~
9 ~~compensation or reimbursement of expenses~~
10 ~~totaling in excess of \$500~~ a hearing on any
11 entity's request for compensation or
12 reimbursement of expenses if the request
13 exceeds \$1,000;

14
15 ****

16 (j) NOTICES TO THE UNITED STATES. Copies of notices
17 required to be mailed to all creditors under this rule
18 shall be mailed:

19 (1) in a chapter 11 reorganization case in which the
20 Securities Exchange Commission has filed either
21 a notice of appearance in the case or a written

22 request to receive notices, to the Securities
23 and Exchange Commission at any place the
24 Commission designates has designated in the
25 notice of appearance or the written request, ~~if~~
26 ~~the Commission has filed either a notice of~~
27 ~~appearance in the case or a written request to~~
28 ~~receive notices;~~

29 (2) in a commodity broker case, to the Commodity
30 Futures Trading Commission at Washington, D.C.;

31 (3) in a chapter 11 case, to the District Director
32 of Internal Revenue for the district in which
33 the case is pending;

34 (4) if the papers filed in the case disclose a stock
35 interest of the United States, to the Secretary
36 of the Treasury at Washington, D.C.,; and

37 ~~(4)~~ (5) if the papers in the case disclose a debt
38 to the United States other than for taxes, to
39 the United States attorney for the district in
40 which the case is pending and to the department,
41 agency, or instrumentality of the United States
42 through which the debtor became is indebted. 7
43 ~~or if the filed papers disclose a stock interest~~
44 ~~of the United States, to the Secretary of the~~
45 ~~Treasury at Washington, D.C. The department,~~
46 agency, or instrumentality shall be identified
47 in the address of the notice mailed to the

United States attorney.

COMMITTEE NOTE

Paragraph(a) (6) is amended to increase the dollar amount from \$500 to \$1,000. The amount was last amended in 1987, when it was changed from \$100 to \$500. The amendment also clarifies that the notice is required only if a particular entity is requesting more than \$1,000 as compensation or reimbursement of expenses. If several professionals are requesting compensation or reimbursement, and only one hearing will be held on all applications, notice under paragraph (a) (6) is required only with respect to the entities that have requested more than \$1,000. If each applicant requests \$1,000 or less, notice under paragraph (a) (6) is not required even though the aggregate amount of all applications to be considered at the hearing is more than \$1,000.

If a particular entity had filed prior applications or had received compensation or reimbursement of expenses at an earlier time in the case, the amounts previously requested or awarded are not considered when determining whether the present application exceeds \$1,000 for the purpose of applying this rule.

Subdivision (j) is amended to require that the address of any notice mailed to the United States attorney under Rule 2002(j) identify the particular department, agency or instrumentality through which the debtor is indebted to the United States. This requirement may be satisfied by including in the address either the name or an acronym commonly used to identify the department. For example, this requirement may be satisfied by addressing the notice to "United States Attorney (SBA)" if the debt is owed through the Small Business Administration. If the debtor is indebted to the United States through more than one department, agency or instrumentality, each should be identified in the address.

Other amendments to Rule 2002 are

stylistic.

Rule 4003. Exemptions

(b) ~~OBJECTIONS~~ OBJECTING TO A CLAIM OF EXEMPTIONS.

1 ~~The trustee or any creditor may file objections~~ An
2 ~~objection~~ objection to the list of property claimed as exempt ~~may~~
3 ~~be filed by the trustee or a creditor only~~ within 30
4 ~~days after the conclusion of the meeting of creditors~~
5 ~~held pursuant to Rule 2003(a) under §341(a) is~~
6 ~~concluded or within 30 days after the filing of any~~
7 ~~amendment to the list or supplemental schedules is~~
8 ~~filed, whichever is later. unless, within such period,~~
9 ~~further time is granted by the court. The court may,~~
10 ~~for cause, extend the time for filing objections if,~~
11 ~~before the time to object expires, the trustee or a~~
12 ~~creditor files a request for an extension. Copies of~~
13 ~~the objections shall be delivered or mailed to the~~
14 ~~trustee, and to the person filing the list, and the~~
15 ~~attorney for such that person.~~
16

COMMITTEE NOTE

This rule is amended to permit the court to grant a timely request for an extension of time to file objections to the list of claimed, whether the court rules on the request before or after the expiration of the 30-day period. The purpose of

this amendment is to avoid the harshness of the present rule which has been construed to deprive a bankruptcy court of jurisdiction to grant a timely request for an extension if it has failed to rule on the request within the 30-day period. See In re Laurain, 113 F.3d 595 (6th Cir. 1997); In re Stoulig, 45 F.3d 957 (5th Cir. 1995); In re Brayshaw, 912 F.2d 1255 (10th Cir. 1990). The amendment also clarifies that the extension may be granted only for cause. Other amendments are stylistic.

Rule 4004. Grant or Denial of Discharge

1 (c) GRANT OF DISCHARGE.

2 (1) In a chapter 7 case, on expiration of the
3 time fixed for filing a complaint objecting to
4 discharge and the time fixed for filing a motion
5 to dismiss the case ~~pursuant to~~ under Rule
6 1017(e), the court shall forthwith grant the
7 discharge unless:

8 ****

- 9 (e) a motion to extend the time for
10 filing a complaint objecting to
11 discharge is pending, or
12 (f) a motion to extend the time for
13 filing a motion to dismiss the case
14 under Rule 1017(e)(1) is pending, or
15 ~~(f)~~ (g) the debtor has not paid in full the
16 filing fee prescribed by 28 U.S.C.

1 §1930(a) and any other fee prescribed
2 by the Judicial Conference of the
3 United States under 28 U.S.C.

4 §1930(b) that is payable to the clerk
5 upon the commencement of a case under
6 the Code.

COMMITTEE NOTE

Subdivision (c) is amended so that a discharge will not be granted while a motion requesting an extension of time to file a motion to dismiss the case under § 707(b) is pending.

Rule 5003. Records Kept By the Clerk

1 (e) Register of Mailing Addresses of Federal and
2 State Governmental Units. The United States or the
3 state or territory in which the court is located may
4 file a statement designating its mailing address. The
5 clerk shall keep, in the form and manner as the
6 Director of the Administrative Office of the United
7 States Courts may prescribe, a register that includes
8 these mailing addresses, but the clerk is not required
9 to include in the register more than one mailing
10 address for each department, agency, or instrumentality
11 of the United States or the state or territory. If
12 more than one address for a department, agency, or

1 instrumentality is included in the register, the clerk
2 shall also include information that would enable a user
3 of the register to determine the circumstances when
4 each address is applicable, and mailing notice to only
5 one applicable address is sufficient to provide
6 effective notice. The clerk shall update the register
7 annually, effective January 2 of each year. The
8 mailing address in the register is conclusively
9 presumed to be a proper address for the governmental
10 unit, but the failure to use that mailing address does
11 not invalidate any notice that is otherwise effective
12 under applicable law.

13 ~~(e)~~ (f) *Other Books and Records of the Clerk.* The
14 clerk shall also keep such any other books and records
15 ~~as may be~~ required by the Director of the
16 Administrative Office of the United States Courts.

COMMITTEE NOTE

Subdivision (e) is added to provide a source where debtors, their attorneys, and other parties may go to determine whether the United States or the state or territory in which the court is located has filed a statement designating a mailing address for notice purposes. By using the address in the register -- which must be available to the public -- the sender is assured that the mailing address is proper. But the use of an address that differs from the address included in the register does not invalidate the notice if it is otherwise effective under applicable law.

The register may include a separate mailing address for each department, agency, or

instrumentality of the United States or the state or territory. This rule does not require that addresses of municipalities or other local governmental units be included in the register, but the clerk may include them.

Although it is important for the register to be kept current, debtors, their attorneys, and other parties should be able to rely on mailing addresses listed in the register without the need to continuously inquire as to new or amended addresses. Therefore, the clerk must update the register, but only once each year.

To avoid unnecessary cost and burden on the clerk and to keep the register a reasonable length, the clerk is not required to include more than one mailing address for a particular agency, department, or instrumentality of the United States or the state or territory. But if more than one address is included, the clerk is required to include information so that a person using the register could determine when each address should be used. In any event, the inclusion of more than one address for a particular department, agency, or instrumentality, does not impose on a person sending a notice the duty to send it to more than one address.

D. Proposed Amendments to Official Bankruptcy Form 1 (Voluntary Petition) and Official Bankruptcy Form 7 (Statement of Financial Affairs) Submitted for Approval to Publish.

1. *Synopsis of Proposed Amendments to Official Forms.*

(a) Form 1 (Voluntary Petition) is amended to require the debtor to disclose whether the debtor owns or has possession of any property that poses a threat of imminent and identifiable harm to public health or safety. If there is such property, the debtor must complete a new exhibit to the petition containing relevant information. The exhibit will alert the United States trustee and the person selected as trustee in the case that immediate precautionary action may be necessary.

(b) Form 7 (Statement of Financial Affairs) is amended to provide more information about the debtor that will be useful to taxing authorities, pension plan supervisors, and governmental units charged with environmental protection and regulation.

2. *Copy of Proposed Amendments to Official Bankruptcy Forms 1 and 7.*

FORM B1	United States Bankruptcy Court District of _____	Voluntary Petition
----------------	--	---------------------------

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (if more than one, state all):	Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code):	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business:	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

<p>Type of Debtor (Check all boxes that apply)</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad</p> <p><input type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker</p> <p><input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker</p> <p><input type="checkbox"/> Other _____</p>	<p>Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)</p> <p><input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 13</p> <p><input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12</p> <p><input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding</p>
<p>Nature of Debts (Check one box)</p> <p><input type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business</p>	<p>Filing Fee (Check one box)</p> <p><input type="checkbox"/> Full Filing Fee attached</p> <p><input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.</p>
<p>Chapter 11 Small Business (Check all boxes that apply)</p> <p><input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101</p> <p><input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)</p>	

<p>Statistical/Administrative Information (Estimates only)</p> <p><input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors.</p> <p><input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.</p>	<p>THIS SPACE IS FOR COURT USE ONLY</p>																		
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Estimated Number of Creditors</td> <td style="text-align: center;">1-15</td> <td style="text-align: center;">16-49</td> <td style="text-align: center;">50-99</td> <td style="text-align: center;">100-199</td> <td style="text-align: center;">200-999</td> <td style="text-align: center;">1000-over</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
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Estimated Assets	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million											
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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>											

Voluntary Petition <i>(This page must be completed and filed in every case)</i>	Name of Debtor(s):
---	--------------------

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)		
Location Where Filed:	Case Number:	Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)		
Name of Debtor:	Case Number:	Date Filed:
District:	Relationship:	Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
 [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
 I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

Signature of Debtor

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of Attorney

Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
 The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner, named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

Signature of Attorney for Debtor(s) Date

Exhibit C

Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.
 No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.

Exhibit "C"

[If, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit "C" to the petition.]

[Caption as in Form 16B]

Exhibit "C" to Voluntary Petition

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor's knowledge, poses a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

COMMITTEE NOTE

The form has been amended to require the debtor to disclose whether the debtor owns or has possession of any property that poses a threat of imminent and identifiable harm to public health or safety. If any such property exists, the debtor must complete and attach Exhibit "C" describing the property, its location, and the potential danger it poses. Exhibit "C" will alert the United States trustee and any person selected as trustee that immediate precautionary action may be necessary.

FORM 7. STATEMENT OF FINANCIAL AFFAIRS
UNITED STATES BANKRUPTCY COURT

_____ DISTRICT OF _____

In re: _____, Case No. _____
(Name) (if known)
Debtor

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - ~~15~~ 17 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions ~~16-21~~ 18 - 25. If the answer to any question is "None," or the question is not applicable, mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the ~~two~~ six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or ~~person in control~~ owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any ~~person in control~~ owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE (if more than one)

There are no proposed amendments to
pages 2 through 5 of the form.

15. Prior address of debtorNone

If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS

NAME USED

DATES OF OCCUPANCY

[The following question is new]

16. Spouses and Former SpousesNone

If the debtor resides or resided in a community property state, commonwealth, or territory (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the six-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Nature, location and name of businessNone

a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and addresses beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **two six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **two six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and addresses beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **two six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and addresses beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **two six years** immediately preceding the commencement of this case.

NAME	<u>TAXPAYER I.D. NUMBER</u>	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES OF OPERATION
------	---------------------------------	---------	--------------------	--

None

b. Identify any business listed in response to subdivision a., ~~b.~~, or ~~c.~~, above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME

ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the ~~two~~ six years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within the ~~two~~ six years immediately preceding the commencement of this case.)

17 18 . Books, records and financial statements

- None a. List all bookkeepers and accountants who within the ~~six~~ two years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS DATES SERVICES RENDERED

- None b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME ADDRESS DATES SERVICES RENDERED

- None c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME ADDRESS

- None d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the two years immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS DATE ISSUED

18 19 . Inventories

- None a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY INVENTORY SUPERVISOR DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

- None b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES OF CUSTODIAN
OF INVENTORY RECORDS**1920. Current Partners, Officers, Directors and Shareholders**

- None a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
------------------	--------------------	------------------------

- None b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
------------------	-------	---

2021. Former partners, officers, directors and shareholders

- None a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
------	---------	--------------------

- None b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
------------------	-------	---------------------

2422. Withdrawals from a partnership or distributions by a corporation

None If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
---	-----------------------------------	--

[The following three questions are new]

23. Tax Consolidation Group.

None If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the six-year period immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER
----------------------------	--------------------------------

24. Pension Funds.

None If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the six-year period immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER
----------------------	--------------------------------

25. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
--------------------------	--	-------------------	----------------------

None

b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
--------------------------	--	-------------------	----------------------

None

c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
--	---------------	--------------------------

* * * * *

There are no proposed amendments to
page 11 (signature page) of the form.

COMMITTEE NOTE

The form has been amended to provide more information to taxing authorities, pension fund supervisors, and governmental units charged with environmental protection and regulation. Four new questions have been added to the form, covering community property owned by a debtor and the debtor's non-filing spouse or former spouse (Question 16), any consolidated tax group of a corporate debtor (Question 23), the debtor's contributions to any employee pension fund (Question 24), and environmental information (Question 25). In addition, every debtor will be required to state on the form whether the debtor has been in business within six years before filing the petition and, if so, must answer the remaining questions on the form (Questions 18 - 25). This is an enlargement of the two-year period previously specified. One reason for the longer "reach back" period is that business debtors often owe taxes that have been owed for more than two years. Another is that some of the questions already addressed to business debtors request information for the six-year period before the commencement of the case. Application of a six-year period to this section of the form will assure disclosure of all relevant information.

Rules Committee
Meeting of June 18 - 19, 1998
Agenda Item 6E
Action Item

MEMORANDUM TO THE CHAIR AND MEMBERS OF THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

SUBJECT: Response to the Final Report of the National Bankruptcy Review Commission

This agenda item is before the Committee for the purpose of recommending to the Judicial Conference appropriate responses to eight rules-related recommendations of the National Bankruptcy Review Commission.

Background

The Bankruptcy Reform Act of 1994 contained a provision authorizing the creation of a National Bankruptcy Review Commission ("Commission") to "investigate and study issues and problems" and report to Congress, the Chief Justice, and the President its findings and conclusions "together with its recommendations for . . . legislative and administrative action." The Commission members were appointed in late 1995 and held a series of public meetings and discussions over the next two years. The Commission filed its final report, containing 172 recommendations, on October 20, 1997.

The Committee on the Administration of the Bankruptcy System ("Bankruptcy Committee") is drafting responses to many of the recommendations and is compiling responses from other committees to those recommendations that address subjects outside the Bankruptcy Committee's areas of jurisdiction or expertise. The Bankruptcy Committee plans to present a complete set of recommended responses to the Judicial Conference for its consideration in September.

Discussion

The Commission's report is 1,300 pages long and includes almost 300 pages of dissenting opinions and separate views of individual commissioners. Although some recommendations were unanimous or had wide support, others are controversial and were adopted by divided vote, often 5 - 4. It is impossible to predict whether, when, or to what extent, the Commission's recommendations may be adopted by Congress and enacted into legislation. Several bankruptcy bills already have been introduced, for example, that would implement the Commission minority's views on consumer bankruptcy issues. Other recommendations, some of which received the unanimous support of the Commission, have been ignored by Congress, so far.

Many of the Commission's recommendations are substantive and are directed to Congress in the form of recommended amendments to the Bankruptcy Code or title 28 of the United States

Code. These proposals do not mention the Federal Rules of Bankruptcy Procedure and, if adopted by Congress, would not require any amendments to the Bankruptcy Rules. A number of substantive proposals that are addressed to Congress for legislative change, however, would require conforming rules amendments, if the statute were amended as suggested. Several of the Commission's recommendations directly address the Bankruptcy Rules in the context of related amendments to the Bankruptcy Code; these recommendations would need to be addressed only if Congress adopts the legislative proposals. A few of the Commission's recommendations concern proposals for amendments to the Bankruptcy Rules unrelated to legislative amendments.

Although many of the recommendations would require rules amendments only if the recommendations are adopted by Congress, a few are addressed directly to the Judicial Conference or the "Rules Committee." This Committee is being asked to respond primarily to those that address rules or official forms directly and that do not require antecedent legislative action. A few recommendations have been assigned that contain both legislative and rules recommendations: 1) Recommendation 1.3.1, concerning reaffirmation agreements; 2) Recommendation 2.3.2, concerning the consent of former partners in a partnership bankruptcy case; 3) Recommendation 2.4.10 concerning the appointment and powers of examiners; and 4) Recommendation 2.5.2, concerning ways to provide flexibility concerning disclosure statements and plans in small business reorganization cases. The proposed responses concerning the legislative portion of these recommendations have been developed in consultation with staff for the Bankruptcy Committee.

Each Commission recommendation assigned to this Committee has been set forth in the Attachment to this memorandum. Included with each recommendation are a statement of any existing position of either the Judicial Conference or any of its committees, a comment or explanation (if appropriate), and a recommendation for response by the Judicial Conference.

Recommendation:

That the Committee approve the attached recommendations for forwarding to the Bankruptcy Committee for compilation and submission to the Judicial Conference.

Advisory Committee on Bankruptcy Rules
Adrian G. Duplantier, Chairman

Attachment

ATTACHMENT

Chapter I. Consumer Bankruptcy — System Administration

Recommendation 1.1.4: *Rule 9011*

The Commission endorses the amended Rule 9011 of the Federal Rules of Bankruptcy Procedure, to become effective on December 1, 1997, which will make an attorney's presentation to the court of any petition, pleading, written motion, or other paper a certification that the attorney made a reasonable inquiry into the accuracy of that information, and thus will help ensure that attorneys take responsibility for the information that they and their clients provide.

Concise Summary of Judicial Conference Position:

Prior Committee Position: The Advisory Committee on Bankruptcy Rules drafted and proposed the amended rule and recognizes that the current rule implicitly may include an obligation on the part of the debtor's attorney to make reasonable inquiry into the facts reported on the schedules, statements, lists and amendments, even though these documents are signed only by the debtor.

Conference Position: The Judicial Conference recommended the amended rule to the Supreme Court in October 1996.

Comment:

The Advisory Committee on Bankruptcy Rules at its October 1998 meeting will consider amending the rule further to expressly provide that the attorney's obligation to make reasonable inquiry extends to a debtor's schedules, lists, statements, and amendments thereto. If the Advisory Committee determines that any amendments should be proposed, the Rules Enabling Act (28 U.S.C. § 2071 et seq.) specifies the procedures by which the amendments would become effective.

Recommendation:

That the Judicial Conference express thanks for the endorsement of the 1997 amendments to Rule 9011 and follow the procedures set forth in the Rules Enabling Act for considering further amendments and recommending them to the Supreme Court.

ATTACHMENT

Chapter I. Consumer Bankruptcy - Reaffirmation Agreements and the Treatment of Secured Debt

Recommendation 1.3.1

11 U.S.C. § 524(c) should be amended to provide that a reaffirmation agreement is permitted, with court approval, only if the amount of the debt that the debtor seeks to reaffirm does not exceed the allowed secured claim, the lien is not avoidable under the provisions of title 11, no attorney fees, costs, or expenses have been added to the principal amount of the debt to be reaffirmed, the motion for approval of the agreement is accompanied by underlying contractual documents and all related security agreements or liens, together with evidence of their perfection, the debtor has provided all information requested in the motion for approval of the agreement, and the agreement conforms with all other requirements of subsection (c).

Section 524(d) should be amended to delineate the circumstances under which a hearing is not required as a prerequisite to a court approving an agreement of the kind specified in section 524(c): a hearing will not be required when the debtor was represented by counsel in negotiations on the agreement and the debtor's attorney has signed the affidavit as provided in section 524(c), and a party in interest has not requested a judicial valuation of the collateral that is the subject of the agreement. If one or more of the foregoing requirements is not met, or in the court's discretion, the court shall conduct a hearing to determine whether an agreement that meets all of the requirements of subsection (c) should be approved. Court approval of an agreement signifies that the court has determined that the agreement is in the best interest of the debtor and the debtor's dependents and does not impose undue hardship on the debtor and the debtor's dependents in light of the debtor's income and expenses.

The Commission recommends that the Advisory Committee on Bankruptcy Rules of the Judicial Conference prescribe a form motion for approval of reaffirmation agreements that contains information enabling the court and the parties to determine the propriety of the agreement. Approval of the motion would not entail a separate order of the court.

Concise Summary of Judicial Conference Position:

Committee Position: The Advisory Committee on Bankruptcy Rules determined at its March 1998 meeting that the Advisory Committee could act on the recommendation concerning a form motion for approval of a reaffirmation agreement without waiting for congressional action to amend the Bankruptcy Code. Any proposed form could be based on the requirements of the current law. If Congress later were to enact legislation that would require changing any form prescribed, the

ATTACHMENT

Advisory Committee could propose conforming amendments. The Advisory Committee has referred the matter to its forms subcommittee and anticipates considering a proposed official form at its October 1998 meeting.

Conference Position: The Judicial Conference has no prior position on the suggestions for amendments to the Bankruptcy Code that are contained in this recommendation. Concerning the recommendation for a new official form, Federal Rule of Bankruptcy Procedure 9009 authorizes the Judicial Conference to prescribe official forms, and the Judicial Conference frequently has exhorted Congress to allow the provisions of the Rules Enabling Act to operate as enacted.

Comment:

A reaffirmation agreement is a form of novation or new contract between a debtor and secured creditor by which, if the agreement is not rescinded by the debtor within the time allowed under 11 U.S.C. § 524(c), the debtor agrees to pay the creditor the full amount stated in the agreement, even though the collateral securing the loan is not worth as much as the debtor owes. Without a reaffirmation agreement, the debtor's personal liability for the amount of the debt would be discharged, and the creditor would receive only what it could realize from repossessing and reselling the collateral. The Commission recommends amending section 524(c) to effectively limit the amount of debt reaffirmed to the value of the collateral, to prohibit a creditor from adding additional charges, to require the creditor to submit proof of the original contract and of perfection of the security interest, and to make clear the circumstances under which a hearing on the agreement is not required. In addition the Commission recommends that the Advisory Committee on Bankruptcy Rules prescribe a form motion for approving a reaffirmation agreement that would enable the court and the parties to determine the propriety of the agreement.

Section 524(d) has proved confusing to courts and practitioners concerning when a court must hold a hearing on a reaffirmation agreement. Well-drafted amendments could make clear the circumstances under which a hearing must be held. Some courts have local rules that require a motion for approval of a reaffirmation agreement to include much of the documentation that the recommendation would require under the statute. Other aspects of the recommendation would establish a national standard for court approval of a reaffirmation agreement, a matter of substantive law. The procedure for prescribing an official form is specified in Federal Rule of Bankruptcy Procedure 9009. The Commission stated that no separate order approving a reaffirmation agreement should be required, which might violate Federal Rule of Bankruptcy Procedure 9021.

Recommendation:

That the Judicial Conference support proposed amendments to section 524(d) of the Code to (1) require appropriate documentation of a motion to approve a reaffirmation agreement and (2) clarify when a court must hold a reaffirmation hearing, but (3) take no position on the merits of amending section 524(c) to specify the standard for approval by the court of a proposed

ATTACHMENT

reaffirmation agreement. Concerning the recommendation for a new official form, the Judicial Conference should allow the procedure for prescribing an official form under Federal Rule of Bankruptcy Procedure 9009 to go forward.

ATTACHMENT

Chapter 2: Partnerships

Recommendation 2.3.2 *Consent of Former Partners*

The Bankruptcy Code and Rules should be amended to clarify that, notwithstanding Recommendation 1 (defining "general partner"), a former general partner of a partnership is not, absent a specific court order to the contrary, required to consent to a voluntary petition by a partnership, to be served with a petition or summons in an involuntary case against a partnership, or to perform the duties of disclosure or procedural duties imposed on a general partner of a debtor partnership.

Concise Summary of Judicial Conference Position:

Prior Committee Position: The Advisory Committee on Bankruptcy Rules, as a policy matter, does not anticipate legislation but only proposes rules to implement legislation that has been enacted. In accordance with this policy, the Advisory Committee on Bankruptcy Rules at its March 1998 meeting adopted a "wait and see" position concerning this recommendation.

Conference Position: At its March 1994 meeting, the Judicial Conference restated to Congress the Conference's opposition to legislation that would amend the federal rules of procedure without following the procedures prescribed in the Rules Enabling Act, 28 U.S.C. §§ 2071 - 2077.

Comment:

Recommendation 2.3.2 clarifies that the expanded definition of "general partner" set out in the preceding recommendation (Recommendation 2.3.1) is not intended to encumber the commencement of voluntary or involuntary bankruptcy cases by or against a partnership by involving in the pleadings and service of process partners that have withdrawn from the partnership. Likewise, this recommendation relieves former partners of disclosure duties, unless the court orders otherwise.

This recommendation would require amending Rules 1004 and 1007(g) of the Federal Rules of Bankruptcy Procedure, but only if Congress were to amend the Bankruptcy Code by enacting the revised definition of "general partner" also recommended by the Commission. Although Congress has the authority to enact procedural rules for the courts directly, the Judicial Conference traditionally has opposed such congressional initiatives and exhorted Congress to defer to the provisions of the Rules Enabling Act.

Recommendation:

That the Judicial Conference urge Congress, if it enacts legislation, to defer to the provisions of the Rules Enabling Act for any procedural rules that may be required to implement changes in the Bankruptcy Code.

ATTACHMENT

Chapter 2: General Issues in Chapter 11

Recommendation 2.4.9 *Employee Participation in Bankruptcy Cases*

Changes to Official Forms, the U.S. Trustee program guidelines and the Federal Rules of Bankruptcy Procedure, are recommended to the Administrative Office of the U.S. Courts, the Executive Office of the U.S. Trustee, and the Rules Committee, as appropriate, in order to improve identification of employment-related obligations and facilitate the participation by employee representatives in bankruptcy cases. The Official Forms for the bankruptcy petition, list of largest creditors, and/or schedules of liabilities should solicit more specific information regarding employee obligations. The U.S. Trustee program guidelines for the formation of creditors' committees should be amended to provide better guidance regarding employee and benefit fund claims. The appointment of employee creditors' committees should be encouraged in appropriate circumstances as a mechanism to resolve claims and other matters affecting the employees in a Chapter 11 case.

Concise Summary of Judicial Conference Position:

Committee Position: The Advisory Committee on Bankruptcy Rules ("Advisory Committee") at its March 1998 meeting considered whether to refer this recommendation to its Subcommittee on Forms with instructions to draft proposed amendments to the official forms. The Advisory Committee determined that disclosure of employee-related obligations such as wages, benefits, and pension fund obligations already is required by the current schedules and, accordingly, that no amendments are necessary.

Conference Position: None.

Recommendation:

That the Judicial Conference inform Congress that the schedules that must be filed by a debtor (Official Form 6) already require disclosure of employee-related obligations and that action on the Commission's recommendation is unnecessary.

ATTACHMENT

Chapter 2: General Issues in Chapter 11

Recommendation 2.4.10 *Enhancing the Efficacy of Examiners and Limiting the Grounds for Appointment of Examiners in Chapter 11 Cases*

Congress should amend section 327 to provide for the retention of professionals by examiners for cause under the same standards that govern the retention of other professionals.

The Advisory Committee on Bankruptcy Rules of the Judicial Conference should consider a recommendation that Federal Rule of Bankruptcy procedure 2004(a) be amended to provide that "On motion of any party in interest or of an examiner appointed under section 1104 of title 11, the court may order the examination of any entity."

Congress should eliminate section 1104(c)(2), which requires the court to order appointment of an examiner upon the request of a party in interest if the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes or owing to an insider, exceed \$5,000,000.

Concise Summary of Judicial Conference Position:

Committee Position: The Advisory Committee on Bankruptcy Rules at its March 1998 meeting considered this recommendation and declined to consider at this time proposing an amendment to Rule 2004 to include an examiner among those who may request an order authorizing an examination under Rule 2004, in part because the almost unlimited scope of such examinations conflicts with the limited duties of an examiner under section 1106(b) of the Bankruptcy Code. The Advisory Committee will monitor any case law that develops on the issue, so the Advisory Committee can reconsider its position, if appropriate.

Prior Conference Position: The Judicial Conference has no prior position concerning the Commission's proposals for amending the Bankruptcy Code to provide for the retention of professionals by examiners and limit the grounds for appointment of examiners in cases under chapter 11. At its March 1994 meeting, however, the Judicial Conference approved a recommendation of the Committee on the Administration of the Bankruptcy System that the circumstances under which a trustee, or trustee's firm, may also be retained as a professional by the trustee be restricted to four specific circumstances and agreed to seek a legislative amendment at an appropriate time. At its March 1994 meeting, the Judicial Conference also restated to Congress the Conference's opposition to legislation that would amend the federal rules of procedure without following the procedures prescribed in the Rules Enabling Act, 28 U.S.C. §§ 2071 - 2077.

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Recommendation:

That the Judicial Conference restate its support for limiting the circumstances under which a trustee or trustee's own firm can be retained as a professional by the trustee but take no position on this recommendation to permit examiners to retain professionals under the same standards that govern the retention of other professionals, because such a change in substantive bankruptcy law concerns a matter of public policy that is best addressed by Congress. That, with respect to the recommendation to consider an amendment to Rule 2004, the Judicial Conference note that the recommendation is addressed directly to the Advisory Committee on Bankruptcy Rules, which has considered the matter and determined, for the time being, simply to monitor any case law that develops and, accordingly, urge Congress to defer to the provisions of the Rules Enabling Act, 28 U.S.C. §§ 2071 - 2077.

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Chapter 2: Small Business Proposals

Recommendation 2.5.2 *Flexible Rules for Disclosure Statement and Plan*

Give the bankruptcy courts authority, after notice and hearing, to waive the requirements for, or simplify the content of, disclosure statements in small business cases where the benefits to creditors of fulfillment of full compliance with Bankruptcy Code § 1125 are outweighed by cost and lack of meaningful benefit to creditors which would exist if the full requirements of § 1125 were imposed:

The Advisory Committee on Bankruptcy Rules of the Judicial Conference ("Rules Committee") shall be called upon to adopt, within a reasonable time after enactment, uniform safe-harbor standard forms of disclosure statements and plans of reorganization for small business debtors, after such experimentation on a local level as they deem appropriate. These forms would not preclude parties from using documents drafted by themselves or other forms, but would be propounded as one choice that plan proponents could make, which if used and completed accurately in all material respects, would be presumptively deemed upon filing to comply with all applicable requirements of Bankruptcy Code §§ 1123 and 1125. The forms shall be designed to fulfill the most practical balance between (i) on the one hand, the reasonable needs of the courts, the U.S. Trustee, and creditors and other parties in interest for reasonably complete information to arrive at an informed decision and (ii) on the other hand, appropriate affordability, lack of undue burden, economy and simplicity for debtors; and

Repeal those provisions of 11 U.S.C. § 105(d) which are inconsistent with the proposals made herein, *e.g.*, those setting deadlines for filing plans.

Amend the Bankruptcy Code to expressly provide for combining approval of the disclosure statement with the hearing on confirmation of the plan.

Concise Summary of Judicial Conference Position:

Committee Position: The Advisory Committee on Bankruptcy Rules, as a policy matter, does not anticipate legislation but only proposes rules to implement legislation that has been enacted. In accordance with this policy, the Advisory Committee on Bankruptcy Rules at its March 1998 meeting adopted a "wait and see" position concerning this recommendation.

The Committee on the Administration of the Bankruptcy System ("Bankruptcy Committee") in June 1993 approved a recommendation of its Subcommittee on Long Range Planning that Congress should consider amending § 1125 of the Bankruptcy Code to authorize the bankruptcy court to grant conditional approval of a disclosure statement, in order to streamline the processing of small chapter 11 cases. At its June 1995 meeting, the Bankruptcy Committee noted

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that the conditional approval process had been enacted in the Bankruptcy Reform Act of 1994 for very small cases in which the debtor had elected special treatment as a small business. In light of the congressional action, the Bankruptcy Committee determined that its earlier recommendation should be reworded as a query for inclusion in a list of issues to be forwarded to the Commission for consideration.

Conference Position: None. At its March 1994 meeting, however, the Judicial Conference restated to Congress the Conference's opposition to legislation that would amend the federal rules of procedure without following the procedures prescribed in the Rules Enabling Act, 28 U.S.C. §§ 2071 - 2077.

Comment:

The Bankruptcy Code in section 1125 specifies that the proponent of a chapter 11 plan must provide to creditors and equity holders, through a disclosure statement approved by the court, all the information a typical investor would require to cast an informed vote on the plan. The Commission's view was that this prospectus-type disclosure statement, which is appropriate in large corporate reorganizations, is more of a costly burden than an aid to reorganization in small chapter 11 cases. The Bankruptcy Committee supports the Commission's proposals to (1) allow the bankruptcy court, after notice and a hearing, to waive the requirements for, or simplify the content of, disclosure statements in small business cases, and (2) grant the court broad discretion to combine the disclosure and confirmation hearings in all small business cases.

This recommendation also would require amending the Federal Rules of Bankruptcy Procedure and prescribing a new official form, but only if Congress first amends the Bankruptcy Code to authorize the bankruptcy court, after notice and hearing, to waive the requirement for, or simplify the contents of, a disclosure statement and to combine approval of a disclosure statement with the hearing on confirmation of a plan. Although Congress has the authority to enact procedural rules for the courts directly, the Judicial Conference traditionally has opposed such congressional initiatives and exhorted Congress to defer to the provisions of the Rules Enabling Act.

Recommendation:

That the Judicial Conference express support for authorizing the bankruptcy courts to exercise greater flexibility in managing small business cases under chapter 11, but urge Congress, if it enacts legislation, to defer to the provisions of the Rules Enabling Act for any procedural rules or official forms that may be required to implement changes in the Bankruptcy Code.

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Chapter 2: Small Business Proposals

Recommendation 2.5.3 *Reporting Requirements*

To create uniform national reporting requirements to permit U.S. Trustees, as well as creditors and the courts, better to monitor the activities of Chapter 11 debtors, the Rules Committee shall be called upon to adopt, with (sic) a reasonable time after enactment, amended rules requiring small business debtors to comply with the obligations imposed thereunder. The new rules will require debtors to file periodic financial and other reports, such as month operating reports, designed to embody, upon the basis of accounting and other reporting conventions to be determined by the Rules Committee, the best practical balance between (i) on the one hand, the reasonable needs of the court, the U.S. Trustee, and creditors for reasonably complete information and (ii) on the other hand, appropriate affordability, lack of undue burden, economy and simplicity for debtors. Specifically, the Rules Committee, shall be called upon to prescribe uniform reporting as to:

- a. the debtor's profitability, *i.e.*, approximately how much money the debtor has been earning or losing during current and relevant recent fiscal periods;
- b. what the reasonably approximate ranges of projected cash receipts and case disbursements (including those required by law or contract and those that are discretionary but excluding prepetition debt not lawfully payable after the entry of order for relief) for the debtor appear likely to be over a reasonable period in the future;
- c. how approximate actual cash receipts and disbursements compare with results from prior reports;
- d. whether the debtor is or is not (i) in compliance in all material respects with postpetition requirements imposed by the Bankruptcy Code and the Bankruptcy Rules and (ii) filing tax returns and paying taxes and other administrative claims as required by applicable nonbankruptcy law as will be required by the amended statute and rules and, if not what the failures are, and how and when the debtor intends to remedy such failures and what the estimated costs thereof are; and
- e. such other matters applicable to small business debtors as may be called for in the best interests of debtors and creditors and the public interest in fair and efficient procedures under Chapter 11.

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Prior Committee Position: None.

Prior Conference Position: None.

Comment:

Recommendation 2.5.3 is part of a series on the subject of small business bankruptcy cases. Amendments to the Federal Rules of Bankruptcy Procedure would be triggered only if legislation is enacted as suggested by the Commission in other recommendations. Although a majority of districts already require regular financial reporting similar to that recommended, the Commission noted the lack of any express, national requirement in either the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure.

Current law assigns to the United States trustee program administered by the Department of Justice the responsibility for supervising the administration of estates in bankruptcy cases. 28 U.S.C. § 586. Regional United States trustees perform this function in all but six federal judicial districts; in the six districts of Alabama and North Carolina, bankruptcy administrators appointed by the circuit councils supervise the administration of bankruptcy estates. Accordingly, it might be more appropriate to assign to the Executive Office for United States Trustees the development of uniform reporting requirements for small business debtors in chapter 11.

Recommendation:

That the Judicial Conference take no position on the merits of this recommendation, but urge Congress, if it enacts legislation on the subject of small business cases under chapter 11 of the Bankruptcy Code, to defer to the provisions of the Rules Enabling Act for any procedural rules or official forms that may be required to implement changes in the Bankruptcy Code.

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Chapter 4: Taxation and the Bankruptcy Code

Recommendation 4.2.3

The Commission should submit to the Advisory Committee on Bankruptcy Rules of the Judicial Conference ("Rules Committee") a recommendation that the Federal Rules of Bankruptcy Procedure require that notices demanding the benefits of rapid examination under 11 U.S.C. § 505(b) be sent to the office specifically designated by the applicable taxing authority for such purpose, in any reasonable manner prescribed by such taxing authority.

Concise Summary of Judicial Conference Position:

Committee Position: The Advisory Committee on Bankruptcy Rules ("Advisory Committee"), at its March 1998, meeting approved preliminary draft amendments to the bankruptcy rules that would require the clerk of the bankruptcy court to maintain a register of mailing addresses for federal and state governmental units. The mailing address for any particular agency would be provided by the agency and use of that address would be conclusively presumed to constitute effective notice on the agency. The Advisory Committee has forwarded the proposed amendments to the Committee on Rules of Practice and Procedure ("Standing Committee") with a request that they be published for comment. If ultimately prescribed by the Supreme Court and not blocked or altered by Congress, amendments to the bankruptcy rules implementing this recommendation would become effective December 1, 2000.

Prior Conference Position: None.

Comment:

The Advisory Committee has been working for several years, independently of the work of the Commission, on proposals to improve notice in bankruptcy cases to all governmental units. Preliminary draft amendments to the bankruptcy rules designed to accomplish that purpose have been forwarded to the Standing Committee with a request that they be published for comment. The proposed amendments will have a much broader effect than would have been accomplished by addressing only this recommendation.

Recommendation:

That the Judicial Conference express general support for the principle of facilitating adequate and effective notice in bankruptcy cases to governmental units and note that proposed amendments to the Federal Rules of Bankruptcy Procedure that would provide better notice to all federal and state governmental units have been published for comment.

II. Information Items

A. Federal Rules of Attorney Conduct.

The Advisory Committee discussed Professor Coquillette's draft of Federal Rules of Attorney Conduct and related materials. The Committee discussed the various alternative approaches set forth in Prof. Coquillette's memorandum to the Chairs and Reporters of the Advisory Committees dated February 11, 1998, and his memorandum to the Standing Committee dated December 1, 1997.

Although 3 members voted for the "do nothing" option, the consensus was in favor of the "dynamic conformity" option (adopting only a single uniform rule for all federal courts that adopts the current rules of the relevant state courts, similar to Rule 1 of the draft of Federal Rules of Attorney Conduct). But, the one rule should provide that the relevant state rules apply only to the extent they are not inconsistent with federal law (the Advisory Committee was most concerned with conflicts with the Bankruptcy Code or bankruptcy-related provisions of title 18 or title 28).

The Advisory Committee would not oppose the "core" federal rules approach for the Civil Rules. But if that approach is followed, more comprehensive study and drafting would be necessary to formulate "core" federal rules for bankruptcy cases. Such an effort would be a long-term project, probably requiring at least three years to complete.

B. Local Rules.

The Standing Committee asked the Advisory Committees for responses to the following questions regarding local rules:

- (1) Should the effective date for all amendments to local rules be December 1? The Advisory Committee consensus is that this is not an important matter. Although it would not oppose such a uniform effective date, it is important to have flexibility for changes that must be implemented sooner. For example, legislative changes may require more immediate conforming amendments to local rules. In

the past, there have been amendments to the Bankruptcy Code that required changes to the Bankruptcy Rules. Because of the long time that it takes to amend a national rule, the Advisory Committee formulated suggested model local rules for immediate adoption. Unless such flexibility is provided to have an earlier effective date when warranted, a uniform effective date is not advisable. The reporter raised the question of whether adoption of a uniform effective date for local rules would require a statutory amendment to 28 U.S.C. § 2071(b).

- (2) Should there be a condition precedent to the effectiveness of local rules (such as approval by the Judicial Council)? The majority of the Advisory Committee opposes such a condition. This change in local rule-making probably would require a statutory amendment to 28 U.S.C. § 2071(c)(2).

C. Electronic Submission of Public Comments

The Advisory Committees have been asked to give their views on a proposal to permit the public to comment on proposed rule amendments by e-mail. The suggestion is to permit e-mail comments for a trial period (two years), but that such e-mail comments would be exempt from the requirements that they be summarized by the reporter and acknowledged.

The Advisory Committee on Bankruptcy Rules discussed this issue and is in favor of permitting comments by e-mail for a trial period. However, the Advisory Committee believes that, if e-mail comments are allowed for a trial period, they should be treated the same as any other comments. They should be subject to the usual procedures that require comments to be summarized and acknowledged. Otherwise, it would create two classes of comments and would give the public the impression that e-mail comments are not treated as seriously as written comments.

D. Shortening the Rules Promulgation Process.

The Advisory Committee discussed briefly the suggestion that the rules promulgation process be shortened. The Committee believes that the time for rules promulgation is too long and would support efforts to shorten it.

E. Recommendations of the National Bankruptcy Review Commission.

The National Bankruptcy Review Commission was created by the Bankruptcy Reform Act of 1994 and was charged with performing a comprehensive two-year study of the American bankruptcy system. The Commission completed its work and submitted its final report to the President, Congress, and the Chief Justice on October 20, 1997. The report is approximately 1300 pages in length (including almost 300 pages of dissenting opinions and separate views of individual Commissioners) and contains 172 recommendations for improving the bankruptcy system. Although some recommendations had unanimous or wide support of the Commissioners, others were controversial and were adopted by a divided vote (often 5-4).

Most of the Commission's recommendations are addressed to Congress and call for legislative amendments to either title 11 or title 28. Several Commission recommendations are expressly directed to the Advisory Committee on Bankruptcy Rules and suggest amendments to the Rules or the Official Bankruptcy Forms that are not dependent on related legislation. The reporter presented summaries of these recommendations at the Advisory Committee meeting. The Advisory Committee discussed these summaries, determined which recommendations had been acted on already (such as those relating to improved notice to governmental units), referred a recommendation to the subcommittee on forms, and placed a recommendation on the agenda for the September 1998 meeting.

F. Proposed Bankruptcy Legislation

Several comprehensive bills have been introduced in the House of Representatives and Senate that would significantly change the Bankruptcy Code and related statutes. These bills expressly require the Advisory Committee or the Judicial Conference to amend or add new Bankruptcy Rules and Official Bankruptcy Forms. Any of these bills, if enacted, would require substantial revisions to the Rules and Forms. As of the date of this report, neither the Senate nor the House of Representatives has passed any of these bills. The Advisory Committee is monitoring these legislative developments closely.

Attachments:

Draft of minutes of Advisory Committee meeting of March 26-27, 1998.