

**UNITED STATES DISTRICT AND BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO**

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December 8, 2008

Amended Memorandum

To: Members of the Bankruptcy Bar and Public

From: Cameron S. Burke, Court Executive

Subject: **Amendments to Federal Rules of Bankruptcy Procedure and Adoption of Revised Official Forms (this supercedes November 26, 2008 summary)**

The summary below was compiled from documents prepared by the Chair of the Judicial Conference Rules Committee and a Report from the Standing Committee of the Judicial Conference. Members of the Bar and Public are strongly encouraged to read the full text of the Rule and Form changes.

The Supreme Court of the United States has approved the following amendments to the Federal Rules of Bankruptcy Procedure, which will take effect on December 1, 2008.

Bankruptcy Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 7012, 7022, 7023.1, 8001, 8003, 9006, 9009, and 9024, and new Bankruptcy Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011.

Bankruptcy Forms: The amended official forms effective December 1, 2008 include: **1 Exhibit D** (Debtor's Compliance with Credit Counseling Requirement); **8** (Chapter 7 Debtor's Statement of Intention), **9F** (Notice of Chapter 11), **10** (Proof of Claim), and **23** (Debtor's Certification of Completion of Postpetition Instructional Course concerning Personal Financial Management). The new official forms, **25A**, **25B**, **25C**, and **26**, implement various sections of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 in connection with small business Chapter 11's. Procedural Forms include **201** (Notice to Individual Consumer Debtor and new Procedural Form **283** (Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q).

Form **22A** (Statement of Current Monthly Income and Means Test Calculation)(Chapter 7) will become effective 12/19/08, pending approval by the Judicial Conference.

Summary of Rules: (we strongly encourage you to refer to the following link for full text of the changes) <http://www.uscourts.gov/rules/supct0408.html>

Bankruptcy Rule 1005 (Caption of Petition) (requires disclosure of all names used by the debtor in the past eight years and last four digits of debtor's taxpayer-identification number).

Bankruptcy Rule 1006 (Filing Fee) (requires debtor in Chapter 7 case to use the appropriate Official Form in order to apply for a filing fee waiver).

Bankruptcy Rule 1007 (Lists, Schedules, Statements, and other Documents; Time Limits) (requires debtor to file additional documents mandated under the Act and limits extensions of time for small business debtors to file schedules and statements. Also requires debtor filing a petition under chapter 15 to include a list of entities with whom the debtor is engaged in litigation).

Bankruptcy Rule 1009 (Amendments of Voluntary Petitions, Lists, Schedules, and Statements) (technical amendment correcting cross reference).

Bankruptcy Rule 1010 (Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign non-main Proceeding) (Requires a foreign representative seeking recognition of a pending foreign non-main proceeding to serve a summons and petition on the debtor and any entity against whom the representative is seeking a provisional relief. It also requires each corporate petitioner in an involuntary case to file a corporate ownership disclosure statement

Bankruptcy Rule 1011 (Responsive Pleading or Motion in Involuntary and Cross-Border Cases) (technical amendment, including a requirement that corporation involved in cross-border insolvency file corporate disclosure ownership statement. The proposed amendment includes other changes necessary to conform to BAPCPA's new chapter 15 provisions.)

Bankruptcy Rule 1015 (Consolidation or Joint Administration of Cases Pending in Same Court) (technical amendment re change in numbering).

Bankruptcy Rule 1017 (Dismissal or Conversion of Case; Suspension) (permits parties in interest to move to dismiss chapter 7 consumer-debtor case for abuse).

Bankruptcy Rule 1019 (Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case) (preserves, upon conversion of a case from chapter 13 to chapter 7, the deadlines for a motion to dismiss a case under § 707(b)).

Bankruptcy Rule 1020 (Small Business Chapter 11 Reorganization Case) (provides new procedures to determine whether debtor is a small business. A party objecting to the small-business designation must file objections within a limited time period).

Bankruptcy Rule 1021 (Health Care Business Case) (provides procedures for designating debtor as a health-care business, including procedures authorizing a party in interest to object to the designation).

Bankruptcy Rule 2002 (Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee) (requires court to promptly provide all creditors with statement by trustee regarding whether debtor's case is presumed abusive. Implements other parts of 2005 Act).

Bankruptcy Rule 2003 (Meeting of Creditors or Equity Security Holders) (authorizes court to order that a meeting of creditors not be convened if the debtor has solicited acceptances of a plan prior to the commencement of a case).

Bankruptcy Rule 2007.1 (Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case) (requires elected trustee to file an affidavit with information on that person's connection with creditors and others with an interest in the case).

Bankruptcy Rule 2007.2 (Appointment of Patient Care Ombudsman in a Health Care Business Case) (requires the appointment of a health care ombudsman in the first 30 days of all health care business cases unless the court finds it unnecessary. Also provides for parties in interest to file a motion to appoint, terminate, or object to the appointment of an ombudsman).

Bankruptcy Rule 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status) (requires small-business chapter 11 debtors to file periodic financial and operating reports. Also requires foreign representatives to report to court and sets the time for filing reports).

Bankruptcy Rule 2015.1 (Patient Care Ombudsman) (establishes notice requirements for reports issued by a healthcare ombudsman, requiring that any request by an ombudsman to review patient records must be approved by the court. It also provides an opportunity for a trustee, patient, or other interested person to object to the ombudsman's request).

Bankruptcy Rule 2015.2 (Transfer of Patient in Health Care Business Case) (implements BAPCPA's provisions authorizing a trustee to relocate patients when a healthcare debtor business is being closed. It provides patients an opportunity to object to the trustee's relocation determination).

Bankruptcy Rule 2015.3 (Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest) (requires debtor in possession or a trustee in a chapter 11 cases to file periodic reports on the value, operations, and profitability of certain entities in which the estate holds a substantial or controlling interest).

Bankruptcy Rule 3002 (Filing Proof of Claim or Interest) (conforms to the new BAPCPA requirement that government units have additional time to file proofs of claim arising from tax returns filed during a chapter 13 case. The amendment also authorizes the court to extend the time for a creditor with a foreign address to file a proof of claim).

Bankruptcy Rule 3003 (Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases) (provides that a court may extend the time for a creditor with a foreign address to file a proof of claim in a chapter 9 or a chapter 11 cases).

Bankruptcy Rule 3016 (Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case) (provides that a small-business debtor need not file disclosure statement in a chapter 9 or 11 case if the plan itself includes adequate information and court finds that separate disclosure statement is unnecessary).

Bankruptcy Rule 3017.1 (Court Consideration of Disclosure Statement in a Small Business Case) (court in a small-business chapter 11 case may conditionally approve plan if adequate information is provided).

Bankruptcy Rule 3019 (Modification of Accepted Plan Before or After Confirmation in a Chapter 9 Municipality or Chapter 11 Reorganization Case) (establishes a procedure in an individual debtor's chapter 11 case for filing and objecting to a proposed modification of a confirmed plan).

Bankruptcy Rule 4002 (Duties of Debtor) (requires a debtor to bring to the creditors' meeting a government-issued picture identification, evidence of a social security number and current income, and statements of financial accountings existing when the case commenced).

Bankruptcy Rule 4003 (Exemptions) (permits trustee to object to an exemption as fraudulent at any time up to one year after a case is closed. Also establishes procedures conforming to BAPCPA's provisions limiting the state homestead exemption if the debtor was convicted of a felony or owes a debt arising from certain causes of action).

Bankruptcy Rule 4004 (Grant or Denial of Discharge) (requires debtor to complete a financial management program before court enters discharge, and allows court to postpone discharge to determine whether debtor committed a felony or owes money arising from certain causes of action).

Bankruptcy Rule 4006 (Notice of No Discharge) (requires clerk to notify parties in interest, including the debtor, that no discharge was entered if debtor failed to complete financial management course).

Bankruptcy Rule 4007 (Determination of Dischargeability of a Debt) (provides time limits governing the filing and notice of a complaint to determine the dischargeability of a debt in a chapter 13 case).

Bankruptcy Rule 4008 (Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement) (establishes a deadline for filing a reaffirmation agreement. Also requires debtor to file a signed statement showing total income and expense from schedules I and J and explaining any discrepancies between the amounts shown on the schedules and the debtor's income and expenses shown on the reaffirmation documentation).

Bankruptcy Rule 5001 (Courts and Clerks' Offices) (permits bankruptcy judges in emergency situations to hold hearings outside of the district in which the case is pending).

Bankruptcy Rule 5003 (Records Kept By the Clerk) (permits government taxing authorities to designate addresses to use for the service of a request under § 505(b)(1)).

Bankruptcy Rule 5008 (Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors) (requires the clerk to give written notice to all creditors, no later than 10 days after the filing of a petition in an individual consumer-debt case, that a presumption of abuse has arisen if the debtor's filing indicates the existence of such a presumption. The new rule also requires written notice when the debtor has failed timely to file the disclosure concerning the presumption of abuse).

Bankruptcy Rule 6004 (Use, Sale, or Lease of Property) (requires the appointment of a consumer privacy ombudsman if a trustee proposes, in certain circumstances, to sell information that includes personal identifiers).

Bankruptcy Rule 6011 (Disposal of Patient Records in Health Care Business Case) (requires trustee to notify patients that their medical records will be destroyed if the records remain unclaimed for one year after publication of the notice).

Bankruptcy Rule 8001 (Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals) (implements the provisions for direct appeals to the courts of appeals that the Act added in 2005).

Bankruptcy Rule 8003 (Leave to Appeal) (provides that the requirement of leave to appeal is satisfied, even if no motion for leave to appeal has been filed, by a certification by the lower court or by the allowance of leave to appeal by the court of appeals).

Bankruptcy Rule 9006 (Time) (provides that extensions of time allowed a small-business debtor for filing schedules and a statement of affairs cannot extend beyond the time set in § 1116(3) of the Code).

Bankruptcy Rule 9009 (Forms) (provides that a plan proponent in a small business chapter 11 case need not use an Official Form for a plan of reorganization and disclosure statement).

The amendments to Rules 7012, 7022, 7023.1 and 9024 correct cross-references to various Civil Rules to conform to the newly restyled Civil Rules.

Summary of Forms: Effective December 1, 2008. Please refer to the following hyperlink for full text of the changes: <http://www.uscourts.gov/bankform/index.html>

Exhibit D to Official Form 1 (Individual Debtor's Statement of Compliance with Credit Counseling Requirement) (alerts debtors to the prepetition credit counseling requirement).

Official Form 8 (Chapter 7 Individual Debtor's Statement of Intention) (adds section covering personal property subject to an unexpired lease and an option labeled "lease will be assumed pursuant to 11 U.S.C. § 362(h)(1)(A)" to the choices a debtor may make. In addition, the form is amended to specify that the debtor's signature is a declaration under penalty of perjury, as required by Rule 1008, and to provide space for the co-debtor's signature.).

Official Form 9F (Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors and Deadlines – Corporation/Partnership case) (revised to delete the debtor's phone number in conformity with the other versions of Official Form 9).

Official Form 10 (Proof of Claim) (the form is amended to instruct the claimant that the information contained in or attached to a claim based on the delivery of health care goods or services should be limited so as to avoid embarrassment or the unnecessary disclosure of confidential information. The claimant is informed that additional disclosure may be required if the trustee or another party in interest objects to the claim. Page two of the form is also amended to revise slightly the definitions of “creditor” and “claim” to conform more closely to the definitions of those terms in the Code).

Official Form 23 (Debtor’s Certification of Completion of Instructional Course Concerning Personal Financial Management) (requires debtor to provide number of the certificate of completion received from the course, requires debtor to indicate any applicable exception to the requirement to complete the course, and states deadlines for filing the certification in a chapter 7 case and a chapter 13 case).

Official Form 25A ([Name of Proponent]’s Plan of Reorganization, Dated [Insert Date]) and **Official Form 25B** ([Name of Proponent]’s Disclosure Statement, Dated [Insert Date]) (new forms for reorganization plan and disclosure statement to be used in small business cases under chapter 11).

Official Form 25C (Small Business Monthly Operating Report) (new form to assist small business debtors in chapter 11 cases to fulfill their financial reporting responsibilities under the Code).

Official Form 26 (Periodic Report Concerning Related Entities) (new form to be used when required by proposed new Bankruptcy Rule 2015.3 to file periodic reports on the profitability of any entities in which a chapter 11 debtor holds a substantial or controlling interest).

Form 201 (Notice to Individual Consumer Debtor)

Director’s Procedural Form B 201 has been amended to advise debtors that Rule 4002 requires the debtor to notify the court of any changes in the debtor’s address. As revised, Form B 201 also states that joint debtors who list the same mailing address on the bankruptcy petition, will generally receive a single copy of each notice mailed from the bankruptcy court in a jointly-addressed envelope.

Form 283 (Chapter 13 Debtor’s Certifications Regarding Domestic Support Obligations and Section 522(q)) Director’s Procedural Form B 283 is new. Form B 283 may be used by debtors to certify that they have complied with two of the requirements set out in section 1328(a) of the Bankruptcy Code for a discharge in chapter 13.

B 22A (Statement of Current Monthly Income and Means Test Calculation) (Chapter 7) (Effective 12/19/08.)

The National Guard and Reservists Debt Relief Act of 2008, Pub.L. 110-438, provides a temporary exclusion from the bankruptcy means test for Reservists and members of the National Guard called to active duty or homeland defense activity after September 11, 2001, for at least 90 days. The proposed amendment to Official Form 22A includes a new Part 1C where

qualifying debtors can invoke the temporary exclusion from the means test. The amended form will be effective on December 19, 2008, the same time the statute is effective.

Interim Rule 1007-1 Lists, Schedules, Statements, and Other Documents; Time Limits; Expiration of Temporary Means Testing Exclusion. Here is a link to the Interim Rule:

http://www.uscourts.gov/rules/BK_Forms_08_Official/Interim_Rule_1007-I_111008.pdf