

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE**

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

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FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Approved for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to 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; proposed new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011; proposed revisions to Official Forms 1, 3A, 3B, 4, 5, 6, 7, 9, A-I, 10, 16A, 18, 19, 21, 22A, 22B, 22C, 23, 24; and proposed new Official Forms 25A, 25B, 25C, and 26 with a recommendation that they be approved and transmitted to the Judicial Conference.

The proposed amendments and new rules (with the exception of technical amendments to Rules 7012, 7022, 7023.1, and 9024), and Official Forms were circulated to the bench and bar for comment in August 2006. The scheduled public hearings on the proposed changes were canceled because no one asked to testify.

In August 2005, the Executive Committee, on recommendation of this Committee, authorized distribution to the courts of Interim Bankruptcy Rules with the recommendation that they be adopted to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“Act”), which generally became effective on October 17, 2005 (Pub. L. No. 109-8). Most of the amendments and new rules proposed to the Bankruptcy Rules are based on the Interim Rules, which were adopted by virtually all bankruptcy courts in local rules or general orders

until final rules could be put in place to implement the Act. Based on the favorable experience of the bench and bar with the Interim Rules, the proposed amendments to the national rules use the Interim Rules language, with only slight adjustments to certain rules. A handful of additional amendments and new rules, which were not included in the Interim Rules, are also proposed to address provisions of the 2005 Act that did not require immediate implementation.

The proposed amendment to Rule 1005 (Caption of Petition) requires a debtor to disclose all names or aliases used by the debtor in the past eight rather than six years. The amended rule also requires disclosure of the last four digits of an individual debtor's taxpayer-identification number in the title of a case.

The proposed amendment to Rule 1006 (Filing Fee) directs the debtor in a chapter 7 case to use the appropriate Official Form to apply for a filing fee waiver.

The proposed amendment to Rule 1007 (Lists, Schedules, Statements, and other Documents; Time Limits) requires a debtor to file a variety of documents mandated under the Act. The amendment limits the extension of time that may be granted to a small-business debtor to file schedules and statements. The amendment also requires a debtor filing a petition to commence a case under chapter 15 to include a list of entities with whom the debtor has been engaged in litigation in the United States.

The proposed amendment to Rule 1009 (Amendments of Voluntary Petitions, Lists, Schedules, and Statements) corrects a cross-reference to the Code.

The proposed amendment to Rule 1010 (Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign Nonmain Proceeding) requires a representative in a pending foreign nonmain proceeding to serve a summons and petition on the debtor and any entity against whom the representative is seeking provisional relief.

The proposed amendment to Rule 1011 (Responsive Pleading or Motion in Involuntary and Cross-Border Cases) requires a corporation involved in a cross-border insolvency case to file a corporate disclosure ownership statement. Other provisions are amended to conform to the new proceedings governing chapter 15.

The proposed amendment to Rule 1015 (Consolidation or Joint Administration of Cases Pending in Same Court) conforms the cross-references to renumbered § 522 of the Code.

The proposed amendment to Rule 1017 (Dismissal or Conversion of Case; Suspension) permits a party in interest to move to dismiss a chapter 7 consumer-debt case as abusive, if the party states with particularity the circumstances of the alleged abuse.

The proposed amendment to 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 deadlines for motions to dismiss a case under § 707(b) upon conversion from chapter 13 to chapter 7.

The proposed amendment to Rule 1020 (Small Business Chapter 11 Reorganization Case) replaces the old rule and provides procedures to determine whether the debtor is a small business. A party objecting to the small-business designation must file objections within a limited time period.

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

The proposed amendment to 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 a court promptly to provide all creditors a copy of the trustee's statement as to whether the

debtor's case will be presumed to be abusive. The amendment also requires the court to provide notice of a hearing on a petition for recognition of a foreign proceeding. The notice must be provided to a debtor and entities against whom provisional relief is sought. Other proposed rule changes implement the Act's amendments to the business provisions of the Bankruptcy Code.

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

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

Proposed new Rule 2007.2 (Appointment of Patient Care Ombudsman in a Health Care Business Case) requires the appointment of a patient-care ombudsman in the first 30 days of a health-care business case unless the court finds it is not necessary for the protection of patients. The new rule also establishes procedures for a party in interest to file a motion to appoint, terminate, or object to the appointment of an ombudsman.

The proposed amendment to Rule 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status) requires a small-business chapter 11 debtor to file periodic financial and operating reports. It also requires a foreign representative to file a notice of a change in status in the foreign proceeding or in the appointment of the foreign representative.

Proposed new Rule 2015.1 (Patient Care Ombudsman) establishes notice requirements concerning reports issued by a health-care ombudsman. The rule requires that any request by the ombudsman to review patient records must be approved by a court. It also provides an

opportunity to the trustee, patient, and other interested persons to object to the ombudsman's request.

Proposed new Rule 2015.2 (Transfer of Patient in Health Care Business Case) authorizes a trustee to relocate patients when a health-care debtor business is being closed. Patients are provided an opportunity to object to the trustee's relocation determination.

Proposed new Rule 2015.3 (Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest) requires a debtor in possession or trustee to file periodic reports of the value and profitability of any entity in which the debtor has a substantial or controlling interest.

The proposed amendment to Rule 3002 (Filing Proof of Claim or Interest) provides additional time for a governmental unit to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case, which conforms to the new time period required by the Act. Under the amendment, a court may extend the time for filing a proof of claim for a creditor with a foreign address.

The proposed amendment to 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 proofs of claim in a chapter 9 or 11 case.

The proposed amendment to 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 a disclosure statement if the plan includes adequate information and a court finds that a separate disclosure statement is unnecessary.

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

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

The proposed amendment to Rule 4002 (Duties of Debtor) requires a debtor to provide a government-issued picture identification and evidence of a social security number, current income, recent Federal income tax returns or tax transcripts, and financial accounts existing when the case commenced.

The proposed amendment to Rule 4003 (Exemptions) allows a trustee to object to an exemption at any time up to one year after the closing of a case if the exemption was fraudulent. The amendment also conforms the rule to § 522(q) of the Code, as revised by the Act, which limits the state homestead exemption to \$138,875 if the debtor had been convicted of a felony or owed a debt arising from certain causes of action.

The proposed amendment to Rule 4004 (Grant or Denial of Discharge) requires a debtor to complete a financial management program before the court may enter a discharge, and authorizes the court to postpone a discharge to determine whether the debtor has committed a felony or owes a debt arising from certain causes of action within a particular time frame.

The proposed amendment to Rule 4006 (Notice of No Discharge) requires the clerk to provide notice to all parties in interest, including the debtor, that no discharge was entered.

The proposed amendment to Rule 4007 (Determination of Dischargeability of a Debt) provides the time limits governing the filing and notice of a complaint to determine the dischargeability of a debt under § 532(c) of the Code in a chapter 13 case.

The proposed amendment to Rule 4008 (Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement) establishes a deadline for filing a reaffirmation agreement.

The amendment also requires a debtor to file a signed statement showing total income and expenses from schedules I and J and an explanation of any discrepancies from the debtor's income and expenses at the time of the filing of the reaffirmation agreement.

The proposed amendment to Rule 5001 (Courts and Clerks' Offices) authorizes a bankruptcy judge in emergency situations to hold hearings outside the district in which the case is pending under 28 U.S.C. § 152(c).

The proposed amendment to Rule 5003 (Records Kept By the Clerk) allows government-taxing authorities to designate addresses to use for the service of a request under § 505(b)(1) of the Code.

Proposed new Rule 5008 (Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors) requires a clerk to give written notice to all creditors no later than 10 days after the filing of a petition that a presumption of abuse has arisen.

The proposed amendment to Rule 6004 (Use, Sale, or Lease of Property) requires the appointment of a consumer-privacy ombudsman if a trustee proposes to sell personally identifiable information in certain circumstances.

Proposed new Rule 6011 (Disposal of Patient Records in Health Care Business Case) requires a trustee to notify patients that their medical records will be destroyed if unclaimed for one year.

The proposed amendment to 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.

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

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

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

The advisory committee also proposed amendments to Rules 7012, 7022, 7023.1, and 9024, which were not published for public comment because they are technical and conform to “style” amendments to the Civil Rules that are scheduled to take effect on December 1, 2007. The proposed amendments to the Bankruptcy Rules modify cross-references to the Civil Rules, which were changed during the style project.

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Recommendation: That the Judicial Conference –

- a. Approve the proposed amendments to 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 Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law;

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