

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

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**TO: Hon. David F. Levi, Chair  
Standing Committee on Rules of Practice and Procedure**

**FROM: Hon. Thomas S. Zilly, Chair  
Advisory Committee on Bankruptcy Rules**

**DATE: December 12, 2005**

**RE: Report of the Advisory Committee on Bankruptcy Rules**

## **I. Introduction**

The Advisory Committee on Bankruptcy Rules met on August 3-5, 2005 in Washington, D.C., and on September 29-30, 2005, in Santa Fe, New Mexico. At the August meeting, the Advisory Committee reached its recommendations for amendments to the Bankruptcy Rules and Official Forms to implement the amendments to the Bankruptcy Code that were enacted on April 20, 2005, with an effective date of October 17, 2005. The Advisory Committee continued its study of the amendments to the Bankruptcy Code and reached additional recommendations for amendments to the Bankruptcy Rules and Official Forms at the meeting in September in Santa Fe.

## **II. Action Items**

The Advisory Committee on Bankruptcy Rules has no action items at this time.

## **III. Information Items**

### *A. Publication of Proposed Amendments*

At its January 2005 meeting, the Standing Committee approved for publication amendments to Bankruptcy Rules 1014, 3007, and 7007.1. This approval was for publication in August 2005. At the June 2005 meeting, the Standing Committee also authorized the publication

of a preliminary draft of amendments to Bankruptcy Rules 3001, 3007 (a different subdivision of Rule 3007 from the amendment previously approved for publication at the January meeting), 4001, and 6006, and new rules 6003, 9005.1, and 9037.

The deadline for submitting comments on these proposals is February 15, 2006. Thus far, we have received only two comments on the proposals. A public hearing on the proposals is tentatively scheduled for January 9, 2006. To date, the Advisory Committee has received only one request to appear at the public hearing.

The Advisory Committee will consider all of the comments submitted on these proposals at its meeting in March, 2006. The Advisory Committee anticipates that it will present these amendments in June, 2006, to the Standing Committee for its approval and transmittal to the Judicial Conference.

*B. Interim Rules and Official Forms to Implement the Bankruptcy Reform Legislation (Pub. L. No. 109-8)*

The enactment of the bankruptcy reform legislation on April 20, 2005, created the need for significant revisions to the Bankruptcy Rules and Official Forms. The general effective date of the reform legislation was October 17, 2005, and the Advisory Committee and its Subcommittees met regularly to prepare proposed Interim Rules and Official Forms to implement the statutory changes. In early August, 2005, the Advisory Committee proposed a number of new rules and forms and amendments to existing rules and forms. These recommendations were approved by the Standing Committee. The Judicial Conference reviewed the proposed Interim Rules and authorized their transmission to the courts. The Judicial Conference approved the new and amended Official Forms. The approval rendered the new and amended Official Forms fully effective, and they have been in force since October 17, 2005.

The Advisory Committee continued its study of the rules and forms and made additional recommendations to the Standing Committee and Judicial Conference after the Advisory Committee meeting in September. The Interim Rules have been adopted in every district in the country. Several districts have revised one or more of the Interim Rules, but the vast majority of the courts have adopted the Interim Rules in the form they were proposed. The courts adopted the rules by standing order because there was insufficient time for adoption of the Interim Rules under the local rule adoption process. Moreover, adoption of the Interim Rules by Standing Order will permit changes to be made to the Interim Rules more quickly should experience under the Interim Rules demonstrate a need for amendments. This is particularly important because the Interim Rules were proposed on an expedited basis and without time to allow for public comment on the proposals. If changes become necessary, they can be made by another standing order. Similarly, when the Interim Rules become national rules under the Rules Enabling Act process, the Interim Rules will no longer be necessary and can be repealed by another order of the court.

Thus far, the Advisory Committee has received twenty-four comments on the Interim Rules and Official Forms. Some of these comments were made prior to the September 2005 meeting of the Advisory Committee and were considered at that time. Other comments have been received thereafter, and they will be considered at the March 2006 meeting of the Advisory Committee. Upon reconsideration of the Interim Rules at the March meeting, those rules, as they may be amended, will be recommended to the Standing Committee for publication in August 2006.

### *C. Other Bankruptcy Rules and Official Forms Amendments*

The Advisory Committee will also be considering several other rules and forms issues raised by the reform legislation that did not have to be included in the Interim Rules and Official Forms already adopted. For example, the Advisory Committee will consider rules and forms for reporting financial information about entities in which the debtor holds a substantial or controlling interest. The Advisory Committee also will take action on rules and forms for plans and disclosure statements for small business debtors in chapter 11 cases. The reform act provided that these changes would not become effective until the promulgation of rules under the Rules Enabling Act, so they were not included in the Interim Rules package.

The Advisory Committee is also studying other possible amendments to the Bankruptcy Rules that do not involve the implementation of the reform legislation.

### *D. Civil Rules Restyling Project*

Part VII of the Bankruptcy Rules adopts by reference many of the Rules of Civil Procedure. Other Bankruptcy Rules also adopt some of the Civil Rules, and the Advisory Committee engaged in a careful review of the restyled Civil Rules to determine whether the restyling of the Civil Rules would have any impact on the Bankruptcy Rules either because of format changes in the Civil Rules (e.g., new or renumbered subdivisions of the Rules) or because the restyled rule might change the substantive meaning of the rule in the context of a bankruptcy case. The reports of subgroups of the Advisory Committee were compiled, and a report is being submitted to the Civil Rules Committee for its consideration. This project also includes conforming amendments to the Bankruptcy Rules that can be proposed upon the adoption of the restyled Civil Rules. Since these amendments would be made simply to conform to the changes in the Civil Rules, they can likely be promulgated without publication. That would permit them to become effective at the same time as the restyled Civil Rules.

Attachments: Draft Minutes of the Advisory Committee Meeting of September 29-30, 2005  
Minutes of the Advisory Committee Meeting of August 3-5, 2005  
Bankruptcy Rules Tracking Docket

## Interim Rules, Forms, etc. Prompted by Bankruptcy Reform Legislation

Rules, Official Forms	Status Pending Further Action	Tentative Effective Date
Rules 1006, 1007, 1009, 1010, 1011, 1017, 1019, 1020, 1021, 2002, 2003, 2007.1, 2007.2, 2015, 2015.1, 2015.2, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5003, 5008, 5012, 6004, 6011, 8001, 8003, 9006, 9009	8/05 - Approved by Committee as Suggested Interim Rules 8/05 - Approved by Standing Committee and transmitted to courts for adoption as Interim Rules 9/05 - Interim Rules 1007, 2002, 4004, and 8001 amended by Committee 10/05 - Amended Interim Rules approved by Standing Committee and transmitted to courts for adoption 3/06 - Committee agenda for review before publication as draft amendments to National Rules	10/17/05 as Interim Rules  12/1/08 as National Rules
Rules 2015(a), 3016(d)	8/05 - Approved request for publication as amendments to National Rules (not part of Interim Rules) 6/06 - Standing Committee agenda	12/1/08 as National Rules
ABA Task Force request concerning attorney compliance	9/05 - Referred to Subcommittee on Attorney Conduct and Health Care 3/06 - Committee agenda	
Official Forms 1, 3A, 3B, 4, 5, 6A-J, 7, 8, 9A-I, 10, 16A, 18, 19A, 19B, 22A, 22B, 22C, 23, 24	8/05 - Approved by Committee 8/05 - Approved by Standing Committee and Executive Committee of Judicial Conference as Official Forms 9/05 - Official Forms 1, 22A, and 22C amended by Committee 10/05 - Amended Official Forms approved by Standing Committee and Executive Committee of Judicial Conference 3/06 - Committee agenda for review before publication as draft permanent amendments	10/17/05 as Official Forms
Director's Forms 18J, 18JO, 18F, 18FH, 18W, 18WH, 201, 240	9/05 - Reviewed by Committee 10/05 - Issued by Director of Administrative Office	10/17/05
Form Plan and Disclosure Statement	9/05 - Model plan approved in principle 9/05 - Model plan and disclosure statement referred to Business Subcommittee 3/06 - Committee agenda	12/1/08

Form for report on value, operations, and profitability of related entities	9/05 - Referred to Business Subcommittee 3/06 - Committee agenda	12/1/08
Periodic report on small business debtor's profitability, cash flow, and compliance	9/05 - Referred to Business Subcommittee 3/06 - Committee agenda	12/1/08

## Active Items

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
<p><b>Rules 1005, 1007</b> Use of other taxpayer ID numbers</p>		<p>3/05 - Committee considered, referred to Subcommittee on Privacy, Public Access &amp; Appeals 9/05 - Referred to Forms Subcomt. 3/06 - Committee agenda</p>	
<p><b>Rule 1009</b> Social security number - amended statement</p>		<p>4/04 - Committee approved for publication 6/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approval 6/05 - Standing Committee approval 9/05 - Judicial Conference approval</p>	12/1/06
<p><b>Rules 1010, 1011</b> Rule 7007.1 applied in involuntary cases</p>	Committee proposal	<p>9/04 - Committee considered, referred to Reporter 3/05 - Committee considered, tabled to 9/05 9/05 - Referred to Business Subcommittee 3/06 - Committee agenda</p>	
<p><b>Rule 1014</b> Clarifies that court may act <i>sua sponte</i> to dismiss or convert a case</p>	Joint Subcommittee on Venue and Chapter 11 Matters	<p>8/04 - Approved by Joint Subcommittee 9/04 - Committee approved for publication 1/05 - Standing Committee approved for publication 8/05 - Published for public comment</p>	12/1/07

<b>Rule 2002(g)(1)</b> Address for notices	05-BK- D Judge Robert D. Martin Clerk Marcia M. Anderson 10/25/05	10/05 - Sent to chair and reporter 11/05 - Also sent to CM/ECF staff	
<b>Rule 2021</b> Large chapter 11 case management and teleconferences	Joint Subcommittee on Venue and Chapter 11 Matters	8/04 - Discussed by Joint Subcommittee 9/05 - Referred to Joint Subcomt. 3/06 - Committee agenda	
<b>Rule 3001</b> Procedure for filing excerpts supporting proof of claim	04-BK-A Glen K. Palman for Claims Subcomt. of CM/ECF Working Group 2/19/04	9/04 - Committee considered, referred to Subcommittee on Forms 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment	12/1/07
<b>Rule 3002(c)(5)</b> Timing issues for notice of newly discovered assets	04-BK-E Judge Dana L. Rasura for Bankruptcy Judges Advisory Group 11/15/04	3/05 - Committee considered, referred to Privacy Subcommittee 9/05 - Deferred pending study of time periods in all federal rules	
<b>Rule 3007(b)</b> Procedure for objection to claim - no affirmative relief at same time		9/04 - Committee approved for publication 1/05 - Standing Committee approved for publication 8/05 - Published for public comment	12/1/07

<b>Rule 3007(c)-(f)</b> Omnibus objections to claims	Joint Subcommittee on Venue and Chapter 11 Matters	8/04 - Considered by Joint Subcomt. 9/04 - Approved in principle by Committee 1/05 - Revised by Joint Subcomt. 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment	12/1/07
<b>Rule 3007</b> Service of objections to claims	Judge Klein	9/05 - Referred to Business Subcommittee 3/06 - Committee agenda	
<b>Rules 3020, 4001(a)</b> Automatic stay terminated at confirmation	05-BK-C Nicholas P. Spallas 9/30/05	10/05 - Sent to chair and reporter	
<b>Rule 4001</b> Requirements for cash collateral motions	Joint Subcommittee on Venue and Chapter 11 Matters	8/04 - Discussed by Joint Subcomt. 9/04 - Discussed by Committee 1/05 - Approved by Joint Subcomt. 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment	12/1/07



<p><b>Rule 4002</b> Clarify debtor's obligation to provide substantiating documents</p>	<p>03-BK-D Lawrence A. Friedman 8/1/03</p>	<p>8/03 - Sent to chair and reporter 9/03 - Committee considered, referred to Consumer Subcomt. 1/04 - Consumer Subcommittee considered at focus group meeting 3/04 - Committee approved for publication 6/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approval (as modified) 4/05 - Committee deferred action 8/05 - Included in Interim Rules</p>	<p>10/17/05</p>
<p><b>Rule 4003(b)</b> Objection to exemptions in converted case</p>	<p>05-BK-B Judge Samuel L. Buford 9/15/05</p>	<p>9/05 - Sent to chair and reporter</p>	
<p><b>Rule 4003(b)</b> Allow retroactive extension of deadline, and provide that secured creditors may object to exemption claim.</p>	<p>04-BK-B Judge Eugene R. Wedoff 2/17/04</p>	<p>3/04 - Sent to chair and reporter 9/04 - Committee considered, referred to Consumer Subcomt. 11/04 - Approved by Subcommittee 3/05 - Committee approved in part, referred to Consumer Subcomt. for further study 9/05 - Committee approved for publication</p>	
<p><b>Rule 4003(d)</b> Lien holder's objection to avoidance notwithstanding the 30-day limit</p>	<p>04-BK-B Judge Eugene R. Wedoff 2/17/04</p>	<p>9/04 - Committee considered as part of Rule 4003(b) amendment, referred to Consumer Subcommittee 3/05 - Committee considered, referred to Consumer Subcomt. 9/05 - Committee approved for publication</p>	

<p><b>Rule 4008</b> Reaffirmation agreement to be filed within 30 days of discharge</p>	<p>01-BK-E Bankruptcy Judges Advisory Group 11/30/01</p>	<p>1/02 - Referred to chair and reporter 3/02 - Committee considered, referred to subcommittee. 10/02 - Committee approved for publication 1/03 - Standing Committee approved for publication 8/03 - Published for public comment 3/04 - Committee approval 6/04 - Standing Committee approval 9/04 - Judicial Conference approval 4/05 - Withdrawn from Supreme Court at request of Committee and Executive Committee due to conflicting provisions in bankruptcy reform legislation 3/06 - Committee agenda as part of review of Interim Rules</p>	
<p><b>Rule 5001(b)</b> Holding court outside the district in an emergency</p>		<p>9/03 - Committee approved in principle; further action deferred 9/05 - Committee approved for publication</p>	
<p><b>Rule 5005(a)(2)</b> Court may permit or require electronic filing</p>	<p>04-BK-D Judge John W. Lungstrum 8/2/04</p>	<p>8/04 - Referred to reporter and chair 9/04 - Committee approved for publication 11/04 - Publication on "Fast Track" (3 month comment period) 3/05 - Committee approval (as modified) 6/05 - Standing Committee approval 9/05 - Judicial Conference approval</p>	<p>12/1/06 Fast Track</p>

<p><b>Rule 5005(c)</b> Add Clerk of the Bankruptcy Appellate Panel and District Judge to entities already listed</p>	<p>03-BK-B Judge Robert J. Kressel 7/2/03</p>	<p>7/03 - Referred to chair and reporter 9/03 - Committee approved for publication 1/04 - Standing Committee approved for publication 8/04 - Published for Public Comment 3/05 - Committee approval 6/05 - Standing Committee approval 9/05 - Judicial Conference approval</p>	<p>12/1/06</p>
<p><b>Rule 6003 (new)</b> First day orders</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Discussed by Joint Subcomt. 9/04 - Discussed by Committee 1/05 - Approved by Joint Subcomt. 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for Public Comment</p>	<p>12/1/07</p>
<p><b>Rule 6006</b> Omnibus Motions to Assume or Reject</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Considered by Joint Subcomt. 9/04 - Approved in principle by Committee 1/05 - Approved by Joint Subcomt. 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for Public Comment</p>	<p>12/1/07</p>

<p><b>Rule 7004(b)(9), (g)</b> Service of summons and complaint on attorney for debtor</p>	<p>Committee proposal</p>	<p>3/04 - Committee approved for publication 6/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approval (as modified) 6/05 - Standing Committee approval 9/05 - Judicial Conference approval</p>	<p>12/1/06</p>
<p><b>Rule 7007.1</b> Corporate ownership statement with initial filing</p>	<p>Committee proposal</p>	<p>9/04 - Committee approval as technical amendment without publication 1/05 - Standing Committee approved publication 8/05 - Published for Public Comment</p>	<p>12/1/07</p>
<p><b>Rule 8002(a)</b> Extending the appeal time</p>	<p>Committee proposal</p>	<p>9/04 - Committee considered, referred to Technology and Cross Border Insolvency Subcommittee 1/05 - Subcommittee recommended taking no action 3/05 - Referred to Technology and Cross Border Insolvency Subcomt. 9/05 - Committee deferred action pending study of time periods in all federal rules</p>	

<p><b>Rule 9005.1 (new)</b> Incorporate proposed Civil Rule 5.1 in the bankruptcy rules.</p>	<p>03-BK-F Judge Geraldine Mund 10/14/03</p>	<p>10/03 - Referred to reporter and chair 3/04 - Committee considered and approved 4/04 - Civil Rules Committee tabled proposed Rule 5.1 1/05 - Standing Committee approved proposed Rule 5.1 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment</p>	<p>12/1/07</p>
<p><b>Rule 9021</b> Separate Document Requirement</p>	<p>04-BK- Judge David Adams</p>	<p>8/04 - Referred to Committee 9/04 - Committee considered, referred to Privacy, Public Access and Appeals Subcommittee 12/04 - Subcommittee discussed alternative approaches 3/05 - Committee approved in principle for contested matters, referred to Privacy, Public Access and Appeals Subcommittee 9/05 - Referred to Privacy, Public Access and Appeals Subcommittee 3/06 - Committee agenda</p>	
<p><b>Rule 9037 (new)</b> Template privacy rule</p>	<p>E-Government Act § 205(c)(3)</p>	<p>9/04 - Committee considered and referred to Reporter, Judge Swain 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment</p>	<p>12/1/07</p>

<b>New Rule</b> Representation of corporations in small claims matters	05-BK-A (see also 00-BK-D, 98-BK-A) Judge Paul Mannes	9/05 - Referred to Attorney Conduct and Health Care Subcommittee 3/06 - Committee agenda	
<b>Official Form 10</b> Amend Proof of Claim form (See Rule 3001)	04-BK-A Glen K. Palman 2/19/04	3/04 - Referred to reporter, chair and Forms Subcommittee 9/04 - Discussed by Committee, referred to Forms Subcommittee 12/05 - Approved by Subcommittee 3/05 - Committee approved for publication 6/05 - Committee deferred action 9/05 - Referred to Forms Subcomt. 3/06 - Committee agenda	

### Inactive Items / Historical Information

<b>Suggestion</b>	<b>Docket No., Source &amp; Date</b>	<b>Status</b>
<b>Rule 1019(3)</b> Superceding claims required in cases converted chapter 7	04-BK-G Attorney Thomas Yerbich 11/8/04	3/05 - Committee considered, no action taken <b>NO FURTHER ACTION</b>
<b>Rules 6004(a), 2002(c)(1)</b> Sale of property	04-BK-F Judge Vincent Zurzolo 9/15/04	10/04 - Referred to reporter for review 3/05 - Committee considered, no action taken <b>NO FURTHER ACTION</b>
<b>Rule 9006</b> Limit after-the-fact extensions of time under Rules 3004 and 3005.	03-BK-005 Judge Dennis Lynn 1/6/04	1/04 - Referred to chair, reporter, and committee 9/04 - Committee deferred action <b>FURTHER ACTION MAY BE APPROPRIATE</b>

<p><b>Rule 9036</b>  Notice by electronic means is ineffective if sender knows notice did not reach intended recipient</p>	<p>Committee proposal (see 02-BK-A)</p>	<p>9/04 - Committee considered, referred to Technology Subcommittee  12/04 - Subcommittee discussion  3/05 - Committee consideration, no action taken  <b>NO FURTHER ACTION</b></p>
<p><b>Official Form 6, Schedule I</b>  Income of non-filing spouse disclosure</p>	<p>03-BK-D  Lawrence A. Friedman  8/1/03</p>	<p>8/03 - Sent to chair and reporter  9/03 - Committee approved for publication  6/04 - Standing Committee approved for publication  8/04 - Published for public comment  3/05 - Committee approval, chair given discretion to refer to Forms Subcommittee if legislation passes  8/05 - Included in revision for reform legislation  <b>NO FURTHER ACTION</b></p>

**Bankruptcy Rules Tracking Docket (By Rule Number)****12/13/05****Approved Items**

<b>Suggestion</b>	<b>Effective Date</b>
<b>Rule 1007</b> Debtor to include in matrix name/address persons for schedules D-H	12/1/05
<b>Rule 2002(g)</b> Allow entity to designate address for purpose of receiving notices	12/1/05
<b>Rule 3004</b> Debtor or trustee may not file proof of claim until creditor's time to file expires	12/1/05
<b>Rule 3005</b> Conform to code	12/1/05
<b>Rule 7004</b> Clerk can sign, seal, and issue summons electronically	12/1/05
<b>Rule 9001</b> Notice provider definition	12/1/05
<b>Rule 9006(f)</b> Additional time after service by mail	12/1/05
<b>Rule 9036</b> Notice by electronic means is complete upon transmission	12/1/05