

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

ROBERT E. KEETON
CHAIRMAN

JOSEPH F. SPANIOL, JR.
SECRETARY

CHAIRMEN OF ADVISORY COMMITTEES

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WILLIAM TERRELL HODGES
CRIMINAL RULES

EDWARD LEAVY
BANKRUPTCY RULES

May 22, 1992

MEMORANDUM TO THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

I am enclosing the report of the Advisory Committee on Bankruptcy Rules recommending various rules changes. The recommended changes in bankruptcy forms will be forwarded later.



Joseph F. Spaniol, Jr.
Secretary

Attachment

cc: Advisory Committee on
Bankruptcy Rules
Dean Daniel R. Coquillette
Professor Mary P. Squiers
Advisory Committee Chairmen and Reporters

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May 8, 1992

TO: Honorable Robert E. Keeton, Chairman
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Edward Leavy, Chairman
Advisory Committee on Bankruptcy Rules

SUBJECT: Proposed Amendments to the Federal Rules of
Bankruptcy Procedure

On behalf of the Advisory Committee on Bankruptcy Rules, I have the honor to transmit proposed amendments to the Bankruptcy Rules for consideration by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

The preliminary draft of proposed changes to the rules was circulated to members of the bench and bar in August, 1991. Comments were received from 34 respondents after publication of the preliminary draft, including those who testified at the public hearing held in Pasadena, California on February 28, 1992, and those who responded in writing. A report of the comments received after publication of the preliminary draft is enclosed.

The Advisory Committee has made several changes to the preliminary draft after the public comment period. The changes are explained in the enclosed memorandum dated May 5, 1992. Also enclosed is a memorandum dated May 7, 1992, on the proposed amendment to Rule 5005(a) that has been the subject of substantial controversy.

A summary of the proposed amendments is provided for your convenience:

(1) Rules 1010 and 1013 contain technical amendments to delete references to the official forms for the summons and the

order for relief in an involuntary case. These forms were deleted from the official forms effective August 1, 1991.

(2) Rule 1017 is amended to clarify that the date of the filing of a notice of conversion in a case under chapter 12 or chapter 13 of the Bankruptcy Code is treated as the date of the entry of the order of conversion for the purpose of applying Rule 1019. Rule 1019 governs the conversion of a case to a chapter 7 liquidation case.

(3) Rule 2002 is amended to avoid the necessity of sending to the Washington, D.C., address of the Securities and Exchange Commission various notices in connection with a chapter 11 case if the Commission prefers to have the notices sent to a local office. The amendment also clarifies that certain notices are to be sent to the Securities and Exchange Commission only if the Commission has filed a notice of appearance or has made a request filed with the court.

(4) Rule 2003 is amended to extend the time for holding the meeting of creditors in chapter 13 cases by ten days so that courts will have greater flexibility for scheduling the meeting. This change will enable courts, if they so desire, to hold the confirmation hearing and the meeting of creditors on the same day while complying with the minimum notice requirements set forth in Rule 2002.

(5) Rule 2005 is amended to change the word "magistrate" to "magistrate judge." This amendment conforms to § 321 of the Judicial Improvements Act of 1990, Pub. L. 101-650 (1990), which changed the title of United States magistrate to United States magistrate judge.

(6) Rule 3009 is amended to delete the requirement that the court approve the amounts and times of distributions in chapter 7 cases. This change recognizes the role of the United States trustee in supervising trustees.

(7) Rule 3015 is amended to provide a time limit for filing a debt adjustment plan after a case is converted to chapter 13 from a different chapter. In addition, procedures relating to objections to confirmation and post-confirmation modification of plans are also added to the rule. Several of these provisions are now contained in Rules 3019 and 3020. A technical correction is also made to clarify that the plan or summary of the plan must be included with each notice of the confirmation hearing in chapter 12 cases pursuant to Rule 2002(a).

(8) The title to Rule 3018 is amended to indicate that the rule is applicable only in chapter 9 municipality and chapter 11 reorganization cases.

(9) Rule 3019 is amended to limit its application to modification of plans in chapter 9 municipality cases and chapter 11 reorganization cases. Provisions relating to modification of plans in chapter 12 and chapter 13 cases are dealt with in Rule 3015 as changed by the proposed amendments.

(10) Rule 3020 is amended to limit its application to confirmation of plans in chapter 9 and chapter 11 cases. Provisions relating to confirmation of chapter 12 and chapter 13 plans are included in Rule 3015 as changed by the proposed amendments.

(11) Rule 5005 is amended to prohibit the clerk from refusing to accept for filing any paper presented for the purpose of filing solely because it is not presented in proper form. This amendment conforms to the 1991 amendment to Rule 5(e) F.R.Civ.P.

(12) Rule 6002 is amended to conform to the language of § 102(1) of the Bankruptcy Code and to clarify that, in the absence of a request for a hearing, an actual hearing is not required to determine the propriety of a prior custodian's administration of property of the estate.

(13) Rule 6006 is amended to delete the requirement for an actual hearing when a hearing is not requested in connection with a motion relating to the assumption, rejection, or assignment of an executory contract or unexpired lease.

(14) Rule 6007 is amended to clarify that an actual hearing is not required if a hearing is not requested and there are no objections in connection with a motion regarding the abandonment of property of the estate.

(15) Rule 9002 contains a technical amendment necessary to conform to the use of the term "district judge" instead of "judge" in the proposed amendment to Rule 16 F.R.Civ. P.

(16) Rule 9019 is amended to conform to the language of § 102(1) of the Code which clarifies that an actual hearing is not required if a hearing is not requested in connection with a motion to approve a compromise or settlement.

(17) Rule 9036 is added to provide for the electronic transmission of certain notices as an alternative to the mailing of notices pursuant to Rule 2002.

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

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

COMMITTEE NOTE

This rule is amended to delete the reference to the official form. The official form for the summons was abrogated in 1991. Other amendments are stylistic and make no substantive change.

**Rule 1013. Hearing and Disposition
of a Petition in an Involuntary Cases Case**

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

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

9 (c) [~~Abrogated~~] ~~ORDER FOR RELIEF. An order for relief shall~~
10 ~~conform substantially to the appropriate Official Form.~~

COMMITTEE NOTE

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

Other amendments are stylistic and make no substantive change.

Rule 1017. Dismissal or Conversion of Case; Suspension

* * * *

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

* * * *

COMMITTEE NOTE

Subdivision (d) is amended to clarify that the date of the filing of a notice of conversion in a chapter 12 or chapter 13 case is treated as the date of the conversion order for the purpose of applying Rule 1019. Other amendments are stylistic and make no substantive change.

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

* * * *

1 (j) NOTICES TO THE UNITED STATES. Copies of notices required
2 to be mailed to all creditors under this rule shall be mailed (1)
3 in a chapter 11 reorganization case, to the Securities and Exchange
4 Commission ~~at Washington, D.C., and at any other place the~~
5 Commission designates, ~~in a filed writing~~ if the Commission has
6 filed either a notice of appearance in the case or ~~has made a~~
7 written request in a filed writing to receive notices;

* * * *

COMMITTEE NOTE

Subdivision (j) is amended to avoid the necessity of sending an additional notice to the Washington, D.C. address of the Securities and Exchange Commission if the Commission prefers to have notices sent only to a local office. This change also clarifies that notices required to be mailed pursuant to this rule must be sent to the Securities and Exchange Commission only if it has filed a notice of appearance or has filed a written request. Other amendments are stylistic and make no substantive change.

Rule 2003. Meeting of Creditors or Equity Security Holders

1 (a) DATE AND PLACE. In a chapter 7 liquidation or a chapter
2 11 reorganization case, Unless the case is a chapter 9 municipality
3 case or a chapter 12 family farmer's debt adjustment case, the
4 United States trustee shall call a meeting of creditors to be held
5 ~~not less~~ no fewer than 20 ~~nor~~ and no more than 40 days after the
6 order for relief. In a chapter 12 family farmer debt adjustment
7 case, the United States trustee shall call a meeting of creditors
8 to be held ~~not less~~ no fewer than 20 ~~nor~~ and no more than 35 days
9 after the order for relief. In a chapter 13 individual's debt
10 adjustment case, the United States trustee shall call a meeting of
11 creditors to be held no fewer than 20 and no more than 50 days
12 after the order for relief. If there is an appeal from or a motion
13 to vacate the order for relief, or if there is a motion to dismiss
14 the case, the United States trustee may set a later ~~time~~ date for
15 the meeting. The meeting may be held at a regular place for
16 holding court or at any other place designated by the United States
17 trustee within the district convenient for the parties in interest.
18 If the United States trustee designates a place for the meeting
19 which is not regularly staffed by the United States trustee or an
20 assistant who may preside at the meeting, the meeting may be held
21 not more than 60 days after the order for relief.

* * * * *
COMMITTEE NOTE

Subdivision (a) is amended to extend by ten days the time for holding the meeting of creditors in a chapter 13 case. This extension will provide more flexibility for scheduling the meeting of creditors. Other amendments are stylistic and make no substantive change.

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

* * * *

1 (b) REMOVAL. Whenever any order to bring the debtor before
2 the court is issued under this rule and the debtor is found in a
3 district other than that of the court issuing the order, the debtor
4 may be taken into custody under the order and removed in accordance
5 with the following rules:

6 (1) If the debtor is taken into custody under the order
7 at a place less than 100 miles from the place of issue of the
8 order, the debtor shall be brought forthwith before the court that
9 issued the order.

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

22 * * * *

COMMITTEE NOTE

Subdivision (b)(2) is amended to conform to § 321 of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, which changed the title of "United States magistrate" to "United States magistrate judge." Other amendments are stylistic and make no substantive change.

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

1 In a chapter 7 cases case, dividends to creditors shall be
2 paid as promptly as practicable ~~in the amounts and at the times as~~
3 ~~ordered by the court~~. Dividend checks shall be made payable to and
4 mailed to each creditor whose claim has been allowed, unless a
5 power of attorney authorizing another entity to receive dividends
6 has been executed and filed in accordance with Rule 9010. In that
7 event, dividend checks shall be made payable to the creditor and
8 to the other entity and shall be mailed to the other entity.

COMMITTEE NOTE

This rule is amended to delete the requirement that the court approve the amounts and times of distributions in chapter 7 cases. This change recognizes the role of the United States trustee in supervising trustees. Other amendments are stylistic and make no substantive change.

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

1 (a) CHAPTER 12 PLAN. The debtor may file a chapter 12 plan
2 with the petition. If a plan is not filed with the petition, it
3 shall be filed within the time prescribed by § 1221 of the Code.

4 (b) CHAPTER 13 PLAN. The debtor may file a chapter 13 plan
5 with the petition. If a plan is not filed with the petition, it
6 shall be filed within 15 days thereafter, and such time ~~shall~~ may
7 not be further extended except for cause shown and on notice as the
8 court may direct. If a case is converted to chapter 13, a plan
9 shall be filed within 15 days thereafter, and such time may not be
10 further extended except for cause shown and on notice as the court
11 may direct.

12 (c) DATING. Every proposed plan and any modification thereof
13 shall be dated.

14 (d) NOTICE AND COPIES. The plan or a summary of the plan
15 shall be included with each notice of the hearing on confirmation
16 mailed pursuant to Rule 2002(b). If required by the court, the
17 debtor shall furnish a sufficient number of copies to enable the
18 clerk to include a copy of the plan with the notice of the hearing.

19 (e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall
20 forthwith transmit to the United States trustee a copy of the plan
21 and any modification thereof filed pursuant to subdivision (a) or
22 (b) of this rule.

23 (f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH
24 IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of

25 a plan shall be filed and served on the debtor, the trustee, and
26 any other entity designated by the court, and shall be transmitted
27 to the United States trustee, before confirmation of the plan. An
28 objection to confirmation is governed by Rule 9014. If no objection
29 is timely filed, the court may determine that the plan has been
30 proposed in good faith and not by any means forbidden by law
31 without receiving evidence on such issues.

32 (g) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to
33 modify a plan pursuant to § 1229 or § 1329 of the Code shall
34 identify the proponent and shall be filed together with the
35 proposed modification. The clerk, or some other person as the
36 court may direct, shall give the debtor, the trustee, and all
37 creditors not less than 20 days notice by mail of the time fixed
38 for filing objections and, if an objection is filed, the hearing
39 to consider the proposed modification, unless the court orders
40 otherwise with respect to creditors who are not affected by the
41 proposed modification. A copy of the notice shall be transmitted
42 to the United States trustee. A copy of the proposed modification,
43 or a summary thereof, shall be included with the notice. If
44 required by the court, the proponent shall furnish a sufficient
45 number of copies of the proposed modification, or a summary
46 thereof, to enable the clerk to include a copy with each notice.
47 Any objection to the proposed modification shall be filed and
48 served on the debtor, the trustee, and any other entity designated
49 by the court, and shall be transmitted to the United States
50 trustee. An objection to a proposed modification is governed by

COMMITTEE NOTE

Subdivision (b) is amended to provide a time limit for filing a plan after a case has been converted to chapter 13. The substitution of "may" for "shall" is stylistic and makes no substantive change.

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

Subdivision (f) is added to expand the scope of the rule to govern objections to confirmation in chapter 12 and chapter 13 cases. The subdivision also is amended to include a provision that permits the court, in the absence of an objection, to determine that the plan has been proposed in good faith and not by any means forbidden by law without the need to receive evidence on these issues. These matters are now governed by Rule 3020.

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

Amendments to the title of this rule are stylistic and make no substantive change.

**Rule 3018. Acceptance or Rejection of
Plans Plan in a Chapter 9 Municipality or a
Chapter 11 Reorganization Case**

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COMMITTEE NOTE

The title of this rule is amended to indicate that it applies only in a chapter 9 or a chapter 11 case. The amendment of the word "Plans" to "Plan" is stylistic.

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

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

COMMITTEE NOTE

This rule is amended to limit its application to chapter 9 and chapter 11 cases. Modification of plans after confirmation in chapter 12 and chapter 13 cases is governed by Rule 3015. The addition of the comma in the second sentence is stylistic and makes no substantive change.

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

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

7 (b) ~~OBJECTIONS~~ OBJECTION TO AND HEARING ON CONFIRMATION IN A
8 CHAPTER 9 OR CHAPTER 11 CASE.

9 (1) Objection. ~~Objections~~ An objection to confirmation
10 of the plan shall be filed and served on the debtor, the trustee,
11 the proponent of the plan, any committee appointed under the Code,
12 and ~~on~~ any other entity designated by the court, within a time
13 fixed by the court. Unless the case is a chapter 9 municipality
14 case, a copy of every objection to confirmation shall be
15 transmitted by the objecting party to the United States trustee
16 within the time fixed for ~~the~~ filing ~~of~~ objections. An objection
17 to confirmation is governed by Rule 9014.

18 (2) Hearing. The court shall rule on confirmation of the
19 plan after notice and hearing as provided in Rule 2002. If no
20 objection is timely filed, the court may determine that the plan
21 has been proposed in good faith and not by any means forbidden by
22 law without receiving evidence on such issues.

23 (c) ORDER OF CONFIRMATION. The order of confirmation shall
24 conform to the appropriate Official Form and notice of entry

1 thereof shall be mailed promptly as provided in Rule 2002(f) to the
2 debtor, the trustee, creditors, equity security holders, and other
3 parties in interest. Except in a chapter 9 municipality case,
4 notice of entry of the order of confirmation shall be transmitted
5 to the United States trustee as provided in Rule 2002(k).

6 (d) RETAINED POWER. Notwithstanding the entry of the order
7 of confirmation, the court may ~~enter all orders~~ issue any other
8 order necessary to administer the estate.

COMMITTEE NOTE

This rule is amended to limit its application to chapter 9 and chapter 11 cases. The procedures relating to confirmation of plans in chapter 12 and chapter 13 cases are provided in Rule 3015. Other amendments are stylistic and make no substantive change.

Rule 5005. Filing and Transmittal of Papers

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

* * * *

COMMITTEE NOTE

Subdivision (a) is amended to conform to the 1991 amendment to Rule 5(e) F.R.Civ.P. It is not a suitable role for the office of the clerk to refuse to accept for filing papers not conforming to requirements of form imposed by these rules or by local rules or practices. The enforcement of these rules and local rules is a role for a judge. This amendment does not require the clerk to accept for filing papers sent to the clerk's office by facsimile transmission.

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

* * * *

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

COMMITTEE NOTE

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

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

* * * *

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

COMMITTEE NOTE

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

**Rule 6007. Abandonment or
Disposition of Property**

1 (a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION; OBJECTIONS;
2 HEARING. Unless otherwise directed by the court, the trustee or
3 debtor in possession shall give notice of a proposed abandonment
4 or disposition of property to the United States trustee, all
5 creditors, indenture trustees, and committees elected pursuant to
6 § 705 or appointed pursuant to § 1102 of the Code. ~~An objection~~
7 ~~may be filed and served by a~~ A party in interest may file and serve
8 an objection within 15 days of the mailing of the notice, or within
9 the time fixed by the court. If a timely objection is made, the
10 court shall set a hearing on notice to the United States trustee
11 and to other entities as the court may direct.

12 (b) MOTION BY PARTY IN INTEREST. A party in interest may file
13 and serve a motion requiring the trustee or debtor in possession
14 to abandon property of the estate.

15 (c) [~~Abrogated~~] ~~HEARING.~~ ~~If a timely objection is made as~~
16 ~~prescribed by subdivision (a) of this rule, or if a motion is made~~
17 ~~as prescribed by subdivision (b), the court shall set a hearing on~~
18 ~~notice to the United States trustee and to other the entities as~~
19 ~~the court may direct.~~

COMMITTEE NOTE

This rule is amended to clarify that when a motion is made pursuant to subdivision (b), a hearing is not required if a hearing is not requested or if there is no opposition to the motion. See Rule 9014. Other amendments are stylistic and make no substantive change.

**Rule 9002. Meanings of Words in the Federal Rules of
Civil Procedure When Applicable to Cases under the Code**

1 The following words and phrases used in the Federal Rules of
2 Civil Procedure made applicable to cases under the Code by these
3 rules have the meanings indicated unless they are inconsistent with
4 the context:

5 * * * *

6 (4) "District court," "trial court," "court," "district
7 judge," or "judge" means bankruptcy judge if the case or
8 proceeding is pending before a bankruptcy judge.

 * * * *

COMMITTEE NOTE

This rule is revised to conform to the use of the term
"district judge" instead of "judge" in the Federal Rules of Civil
Procedure. See F.R.Civ.P. 16(b) as amended in 1993.

Rule 9019. Compromise and Arbitration

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

COMMITTEE NOTE

Subdivision (a) is amended to conform to the language of § 102(1) of the Code. Other amendments are stylistic and make no substantive change.

Rule 9036. Notice by Electronic Transmission

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

COMMITTEE NOTE

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

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

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

Electronic transmission pursuant to this rule completes the notice requirements. The creditor or interested party is not thereafter entitled to receive the relevant notice by mail.

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May 5, 1992

TO: Hon. Robert E. Keeton, Chairman
Standing Committee on Rules of Practice and Procedure

FROM: Hon. Edward Leavy, Chairman
Advisory Committee on Bankruptcy Rules

SUBJECT: Explanation of Changes Made Subsequent to the Original
Publication of the August 1991 Preliminary Draft of the
Proposed Amendments to the Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules considered the testimony of each witness at the public hearing held in Pasadena, California, on February 28, 1992, and all other communications received from interested individuals and groups who responded to the Advisory Committee's request for comments on the preliminary draft of proposed amendments to the Bankruptcy Rules published in August, 1991. Changes in language for clarification or stylistic improvement have been made.

The significant changes made by the Advisory Committee subsequent to the original publication of the preliminary draft of the proposed amendments to the rules are:

PART III
CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY
INTEREST HOLDERS; PLANS

Rule 3002. Filing Proof of Claim or Interest

The Advisory Committee has deleted the proposed amendments to Rule 3002(a) and (c).

The proposed amendment to Rule 3002(a) contained in the preliminary draft would require secured creditors to file proofs of claim for their secured claims to be allowed in chapter 7,

chapter 12, and chapter 13 cases. The proposed change was controversial, and the Advisory Committee decided to withdraw and reconsider it and also to consider possible alternative or additional amendments for future presentation to the Standing Committee.

The proposed amendment to Rule 3002(c), which also was controversial, would give the court discretion to extend the time for filing a proof of claim in a chapter 13 case if the failure to file was due to excusable neglect. The Advisory Committee intends to reconsider the need or wisdom of this change, and to study possible alternative amendments.

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

The title of this rule has been changed to more accurately reflect the content of the rule.

A sentence has been added to subdivision (f) to provide that, in the absence of an objection, the court may determine that a chapter 12 or chapter 13 plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on these issues. Rule 3020(b)(2), presently applicable in chapter 9, chapter 11, chapter 12, and chapter 13 cases, contains the same provision. As amended, however, Rule 3020 will not apply in chapter 12 and chapter 13 cases. The heading of subdivision (f) has been changed to more accurately reflect the content of the subdivision.

**PART V
COURTS AND CLERKS**

Rule 5005. Filing and Transmittal of Papers

The Committee Note has been changed to delete the suggestion that the clerk may advise a party or counsel, or may be directed to inform the court, that a paper is not in proper form. The procedures relating to filed papers that are not in proper form are left to local rules and practices. A sentence was added to the Committee Note to clarify that the amendment does not require the clerk to accept for filing papers sent by facsimile transmission.

PART IX
GENERAL PROVISIONS

**Rule 9002. Meanings of Words in the Federal
Rules of Civil Procedure When
Applicable to Cases under the Code**

Subdivision (4) has been changed to provide that the phrase "district judge," when used in the Federal Rules of Civil Procedure made applicable to cases under the Code, means "bankruptcy judge" if the case or proceeding is pending before a bankruptcy judge. This is a technical amendment made necessary by the proposed amendment to F.R.Civ.P. 16(b) that will change the word "judge" to "district judge." F.R.Civ.P. 16 is made applicable to adversary proceedings by Bankruptcy Rule 7016. The Advisory Committee recommends that this change be made without publication for public comment because it is technical and does not make any substantive change.

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

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CRIMINAL RULES
EDWARD LEAVY
BANKRUPTCY RULES

May 4, 1992

TO: Honorable Robert E. Keeton, Chairman
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Edward Leavy, Chairman
Advisory Committee on Bankruptcy Rules

SUBJECT: Report of the Comments Received Subsequent to the
Publication of the Preliminary Draft of Proposed
Amendments to the Bankruptcy Rules

A preliminary draft of the proposed amendments to the Bankruptcy Rules was circulated to members of the bench and bar in August 1991. A public hearing was scheduled to be held in Raleigh, North Carolina, on January 24, 1992, but was cancelled because of the lack of witnesses requesting to testify. A public hearing was held in Pasadena, California, on February 28, 1992, at which five witnesses testified.

The Advisory Committee on Bankruptcy Rules received letters and/or received testimony from 34 commentators. A list of the names and addresses of the commentators is attached. Following the list is a rule-by-rule summary of the comments received.

The number of people who commented on each of the proposed rule amendments follows:

<u>RULE</u>	<u>NUMBER OF COMMENTS</u>
1010	none
1013	none
1017	none
2002	none

2003	5
2005	none
3002 (a)	6
3002 (c) (7)	8
3009	6
3015	5
3018	1
3019	none
3020	none
5005	17
6002	2
6006	2
6007	2
9019	3
9036	6

COMMENTATORS

Proposed Amendments to the Federal Rules of
Bankruptcy Procedure Published in August 1991

NAME and ADDRESS and DATE of LETTER:	RULES:
Allsburg, Mark Van Clerk United States Bankruptcy Clerk Western District of Michigan Gerald R. Ford Federal Building P.O. Box 3310 Grand Rapids, Michigan 49501 (1/22/92)	5005
Apperson, Jeffrey A. Clerk United States Bankruptcy Court Western District of Kentucky 601 West Broadway Louisville, Kentucky 40202 (3/17/92)	3009
Bezanson, Dennis G., President National Association of Bankruptcy Trustees ("NABT") 49 Atlantic Place South Portland, Maine 04106 (12/19/91)	3009
Bodoff, Joseph S.U., Esq. Warner & Stackpole 75 State Street Boston, Mass. 02109 (1/17/92)	9036
Bolton, Bradford L. Clerk United States Bankruptcy Court District of Colorado 721 Nineteenth Street, First Floor Denver, Colorado 80202-2508 (1/22/92)	5005

<p>Bufford, Hon. Samuel United States Bankruptcy Court Central District of California 312 North Spring Street Los Angeles, California 90012 (Testimony 2/28/92)</p>	<p>2003, 3002(a)</p>
<p>Burton, Dennis E. Clerk United States Bankruptcy Court Southern District of Indiana 123 United States Courthouse 46 East Ohio Street Indianapolis, Indiana 46204 (9/24/91)</p>	<p>9036</p>
<p>Cauthen, George B., Esq. Nelson, Mullins, Riley & Scarborough P.O. Box 11070 Columbia, South Carolina 29211 (1/15/92/)</p>	<p>5005</p>
<p>Craig, John W. L. II Clerk United States Bankruptcy Court Western District of Virginia Old Federal Building - Room 200 Second Street & Church Avenue, S.W. P.O. Box 2390 Roanoke, Virginia 24010 (12/12/91)</p>	<p>5005</p>
<p>Ericson, Rick Clerk's Office United States Bankruptcy Court Central District of California 312 North Spring Street Los Angeles, California 90012 (testimony 2/28/92)</p>	<p>5005</p>
<p>Fenning, Hon. Lisa Hill United States Bankruptcy Court 312 North Spring Street, Room 831 Los Angeles, California 90012 (2/12/92; 2/28/92 memorandum and testimony)</p>	<p>2003, 3002(a), 5005, 6002, 6006, 6007, 9019, 9036</p>
<p>Grant, Hon. Robert E. United States Bankruptcy Court Northern District of Indiana Fort Wayne, Indiana 46802 (1/15/92)</p>	<p>3002(a), 3002(c)(7)</p>

Hess, Hon. Henry L. Hess United States Bankruptcy Court District of Oregon 1001 S.W. 5th Avenue #900 Portland, Oregon 97204 (6/21/91, 7/12/91, 11/21/91)	3002(c) (7)
Ippongi, Dorothy K. Clerk United States Bankruptcy Court P.O. Box 50121 Honolulu, Hawaii 96850 (9/19/91)	5005
Kay, Samuel L. Clerk United States Bankruptcy Court Southern District of West Virginia 500 Quarrier Street, Room 2201 Charlston, West Virginia 25301 (2/13/92)	5005, 9036
Kelly, Hon. Ralph H. United States Bankruptcy Court Eastern District of Tennessee Historic U.S. Courthouse 31 East 11th Street Chattanooga, Tennessee 37402-2722 (2/6/92)	3015
Kennedy, Hon. David S. United States Bankruptcy Court Western District of Tennessee 200 Jefferson, Suite 645 Memphis, Tennessee 38103 (2/10/92)	3009
Klein, Gary, Staff Attorney National Consumer Law Center Inc. Eleven Beacon Street Boston, MA. 02108 (2/24/92)	3002, 3015, 5005
Kohn, J. Christopher ("Justice Dept.") Director, Commercial Litigation Branch U.S. Department of Justice Washington, D.C. 20530 (2/24/92)	2003, 3002(a), 3002(c) (7), 3015, 3018 3020

<p>Lewis, Elizabeth Assistant Circuit Executive United States Courts for the Ninth Circuit 121 Spear Street, Suite 204 P.O. Box 193846 San Francisco, California 94119-3846 (Testimony 2/28/92)</p>	<p>5005</p>
<p>Lundin, Hon. Keith M. United States Bankruptcy Court Middle District of Tennessee Customs House 701 Broadway Nashville, Tenn. 37203 (7/17/91)</p>	<p>3002(a), 3002(c)(7)</p>
<p>Martens, Patti Divisional Manager Clerk's Office in Santa Anna United States Bankruptcy Court Central District of California (Testimony 2/28/92)</p>	<p>5005</p>
<p>Mitsch, Robert F. Vice President, Director of Bankruptcy Control ITT Consumer Financial Corp. Waterford Park 605 Highway 169 North, Suite 1200 P.O. 9394 Minneapolis, Minnesota 55440 (12/4/91)</p>	<p>2003, 3002(c)(7), 3015, 9019</p>
<p>National Association of Bankruptcy Trustees 3008 Millwood Avenue Columbia, S. Car. 29205 (2/12/92)</p>	<p>3009</p>
<p>Northern Idaho Debtors' Counsel P.O. Box 974 Coeur d'Alene, Idaho 83814 (1/24/92)</p>	<p>3015</p>
<p>Pearson, Hon. H. Clyde United States Bankruptcy Court Western District of Virginia P.O. Box 2389 Roanoke, Virginia 24010 (1/14/92 and 1/17/92)</p>	<p>5005</p>

Reitmeyer, Mary, Secretary National Association of Bankruptcy Trustees ("NABT") Suite 1310 Allegheny Building 429 Forbes Avenue Pittsburgh, PA 15219 (11/11/91)	3009
Schueler, Brenda A. Clerk United States Bankruptcy Court District of South Carolina Federal Building - 1100 Laurel Street P.O. Box 1448 Columbia, South Carolina 29202 (12/12/91)	5005, 9036
Sergent, Birg E., Esq. P.O. Box 426 Pennington, Virginia 24277 (3/11/92)	5005
Spector, Hon. Arthur J. United States Bankruptcy Court Eastern District of Michigan 311 Federal Building 1000 Washington Avenue P.O. Box X-911 Bay City, Michigan 48707 (9/27/91)	3002(c) (7)
Stone, Martin, Esq. 1743 Larkspur Drive Lindhurst, OH 44124-2813 (1/5/92)	2003, 3002(a), 5005, 6002, 6006, 6007, 9019, 9036
Weil, Diane C., Esq. L.A. Chapter of the Federal Bar Association Danning, Gill, Gould, Diamond & Spector 2029 Century Park East, 19th Floor Los Angeles, California 90067-3088 (2/27/92)	3009, 5005
Weisman, Hon. Michael J. Assistant Attorney General 900 Fourth Avenue #2000 Seattle, Washington 98164-1012 (1/23/92)	3002(c) (7)

Wroten, Joseph E.

5005

Clerk

United States Bankruptcy Court
Northern District of Mississippi
Federal Building

P.O. Drawer 867

Aberdeen, Mississippi 39730-0867

(1/8/92)

Rule 2003. Meeting of Creditors or Equity Security Holders

1. Mr. Mitsch. Opposes the change because (1) under the proposed Rule 3015(d) [probably means Rule 3015(f)], the meeting of creditors could be held after the date to file objections to confirmation of the plan; (2) it makes the meeting of creditors pointless because it would be too late to use the information discovered there to object to confirmation (the creditor would not have time to contact its lawyer, file the objection, etc.); (3) this shortness of time would deprive the creditor of due process.

2. Mr. Stone. Opposes condensing the time between the meeting of creditors and the confirmation hearing because the shortened time period does not give creditors a meaningful opportunity to make reasonable evaluations. He comments that "a mockery is made of procedural, if not substantive due process."

3. Judge Fenning. Supports the amendment as a "welcome measure of flexibility."

4. Justice Dept. Opposes the change as a "step in the wrong direction" because of its purpose in having the meeting of creditors and confirmation hearings together. Opposes early confirmation hearings and suggests that they should be held after the bar date. He is more opposed to the purpose of the change than to the change itself which, he says, provides flexibility in scheduling. He also says that the problems regarding the early confirmation hearing is made worse in view of proposed Rule 3015(f) which requires written objections to confirmation.

5. Judge Bufford. Testified in favor of the proposed amendment to Rule 2003 to provide flexibility in scheduling the meeting of creditors and the confirmation hearing in chapter 13 cases.

Rule 3002. Filing Proof of Claim or Interest

Subdivision (a):

1. Judge Lundin. Expresses the view that the proposed amendment to Rule 3002(a) is a "step in the right direction."
2. Judge Grant. Opposes the proposed amendment. An asset subject to a creditor's lien could be administered for the benefit of creditors by being sold by the trustee for an amount exceeding the balance owed to the secured creditor. Judge Grant says that under the proposed amendment, if the secured creditor does not file a timely proof of claim, a distribution of the proceeds could not be paid to it despite the fact that the lien would attach to the sale proceeds to the extent of the debt. He suggests that this may be overcome in a chapter 7 case by an abandonment of the proceeds to the secured creditor, but this would render the proposed amendment a nullity since it would be the equivalent of permitting a late filed claim.

Judge Grant says that the problem is more dramatic in chapter 11, 12 and 13 cases because secured creditors who do not file timely claims will be barred from participating in a distribution under a confirmed plan, even if the plan provides for payments to the secured creditor. This can cause the "anomalous situation of having a plan which is specifically premised upon making specific payments to a certain secured creditor, and yet, cannot be successfully implemented because of the lack of a timely claim." The proposed amendment "would also seem to potentially give secured creditors the opportunity to opt out of bankruptcy proceedings through the conscious decision not to file a claim."

3. Mr. Stone. Welcomes the change as "long overdue," but is concerned that it may not be consistent with sections 501(b) and (c) of the Code. He also asks whether this applies to proofs of interest, and whether a secured creditor must file a proof of claim regardless of how it is scheduled. He also suggests further changes that go beyond the scope of this amendment, such as requiring multiple copies of proofs of claim to be filed and additional information to go to creditors.
4. Judge Fenning. Supports the change and says that it should assist in the administration of chapter 13 cases.
5. Justice Dept. Opposed to the change. There is no mechanism that exists to force a secured creditor to file a proof of claim, or to punish a secured creditor who does not file. Thus, the requirement is unenforceable. Cites § 501 and 506(d) of the Code. Also, if some sanction were contemplated, it would unfairly discriminate against governmental units because waiver

of sovereign immunity under § 106(a) and (b) is based on the filing of a proof of claim. Also, secured creditors unschooled in bankruptcy may think that the lien is lost because of the failure to file a proof of claim.

6. Judge Bufford. Testified in favor of the proposed amendment so that secured creditors will be required to file proofs of claim.

Subdivision (c)(7):

1. Judge Spector. Questions why the proposed change is limited to chapter 13. Suggests that it be applicable in chapter 12 also, and perhaps in chapter 11 and "certain types of chapter 7 cases." By limiting this rule to chapter 13 cases, "you would presumably sound a deathknell to any possible argument that good cause is grounds for such relief in the other chapters."

Second, he observes that the Committee Note seems to equate excusable neglect with due process concerns. He states that it is his understanding that due process already "mandates allowance of that [unscheduled] claim," or at least an extension of time to file a proof of claim. "If that is already the law what purpose is served by writing a rule that goes no further than that?" In conclusion, he suggests that the Committee may want to abandon or broaden the proposed addition to the rule.

2. Judge Hess. Judge Hess sent in three letters commenting on Rule 3002(c)(7). He opposes the proposed amendment. It is interesting that Judge Hess (in contrast to Judge Spector, but consistent with several court decisions) is of the view that the current state of the law is that late filed claims may not be allowed, although such claims are not discharged if not scheduled in time to give the creditor sufficient notice.

Judge Hess opposes the proposed amendment for the following reasons:

(1) If the purpose is to permit unlisted creditors to file late claims, the proposed amendment is too broad in that it would also allow courts to permit late filed claims by listed creditors based on "excusable neglect." Why should the listed creditor in chapter 13 be given greater rights than the listed creditor in a chapter 7 case?

(2) The time for filing claims "has always been a matter for Congress to determine" and has been in the nature of a statute of limitations. "Some reason ought to be given before a rule is adopted that overrules years and years of case law about which any prior controversy has been long

settled."

(3) The amendment would give a creditor the right to file a late claim, which is now reserved for a debtor or trustee under § 501(c) of the Code. This should be done by Congress, not the Rules, as it would change substantive law.

(4) Ten cases are cited that hold that an unlisted creditor's claim is not discharged in chapter 13. Due process requirements would not permit the discharge of such claims. Therefore, the proposed amendment is not necessary to protect unlisted creditors.

(5) Rule 3002 does not give a court discretion to permit the late filing of a claim, whereas Rule 3003(c)(3) gives the court such discretion in chapter 11 cases. He prefers the certainty and predictability of the current rule over the uncertainty that now exists in chapter 11 cases which has spawned a great deal of litigation.

3. Judge Lundin. Supports the view of Judge Hess in opposing the proposed amendment to Rule 3002(c)(7).

4. Mr. Mitsch. Does not oppose the proposed change, but suggests that "excusable neglect" be defined. The term covers many categories, but the Committee Note only mentions the situation involving the unsecured creditor. He seems to favor a broader interpretation. He also suggests that the rule specify that the allowed proof of claim controls over the chapter 13 plan.

5. Mr. Weisman. Opposes the proposed addition of Rule 3002(c)(7) because it would create a higher standard for creditors to meet than currently exists. He claims that courts now use a "good faith" standard for government units to file a late proof of claim, and that the good faith standard is better than an excusable neglect standard. Suggests that the proposed amendment be added, but end the sentence after the words "by the creditor." He cites several cases construing "excusable neglect" in a way that he thinks is too narrow.

6. Judge Grant. The goal of the proposed change (to give the unsecured creditor the opportunity to participate in a distribution from the estate) "is laudable", but Judge Grant is concerned that the "excusable neglect" standard is broader than the Committee Note indicates. Either limit the text of the rule to the situation where the creditor is unsecured and without knowledge of the case, or add to the Committee Note additional examples of "excusable neglect." Otherwise, litigation will

result because of the uncertainty as to what was intended.

7. Justice Dept. Suggests using the concept of "lack of knowledge" instead of "excusable neglect" since excusable neglect is based on neglect, not the lack of due process. However, the writer commends the effort for greater flexibility.

8. Mr. Klein. Opposes the change because it will hurt low-income debtors in two ways: the debtors cannot afford to litigate excusable neglect issues, and modifications of plans will be more common and expensive if filings past the deadline are permitted. Prefers the hard and fast deadline.

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

1. Ms. Reitmeyer (NABT). Opposes the proposed change to Rule 3009. Thinks that the change will not improve the system and may act as a detriment to creditors and panel trustees. The present rule provides protection to the panel trustee which the NABT feels "is essential to the continued stability of the system and the operation by the private panel trustees of their obligations under the Code."

2. Mr. Bezanson (NABT). Opposes the proposed change. Proofs of claim can be misplaced or lost or otherwise not present in the court file when claims are reviewed by the trustee; there is potential exposure to liability of the panel trustee without the "qualified immunity" that a court order could provide. Trustees face other liability today (environmental, tax), and this proposed change could produce another disincentive to serving as a panel trustee. Review by the U.S. Trustee provides no protection to the panel trustee in circumstances where claims surface after distribution because the U.S. trustee review does not relieve a trustee of liability.

3. National Assoc. of Bankruptcy Trustees. Opposes the proposed change because a court order approving distributions protects trustees from liability.

4. Judge Kennedy. Opposes the change as it places the U.S. Trustee in a quasi-judicial role. This is an improper delegation of a traditional judicial role to an administrative overseer. This change is also not a good one because of Rule 2002(f)(8) which avoids the need to send the trustee's final report to creditors if the distributions are under \$1500. In addition, this change makes the trustee's final report and account meaningless.

5. Ms. Weil. Opposes the change because it exposes the trustee to liability for errors beyond the trustee's control, such as those that occur from lost proofs of claim. This will discourage qualified individuals from serving as the trustee.

6. Mr. Apperson. Opposes the change: (1) It gives the executive branch (US Trustee) a "core matter" judicial function of approving distributions, (2) conflict of interest would result by having the US Trustee appoint and review trustees, (3) it works fine as is, (4) the process would be complicated administratively because of the combined orders used today, and (5) this would assist those who would want the bankruptcy system administered in the executive branch.

**Rule 3015. Filing of Plan in Chapter 12 Family Farmer's
Debt Adjustment and Chapter 13 Individual's
Debt Adjustment Cases**

1. Mr. Mitsch. Supports the amendment that requires the debtor to file a plan within 15 days after conversion of the case to chapter 13.
2. Judge Kelly. Points out a technical error in the amendment in that the sentence in Rule 3020(b)(2) (court need not hear evidence on the debtor's good faith in the absence of an objection) was not brought over to Rule 3015.
3. Mr. Klein. Opposes change regarding proposed Rule 3015(g); it would change current practice in many jurisdictions by eliminating hearings on modified plans unless a party in interest objects. The problem is that many low-income debtors do not understand the proposed modification, either because their lawyers ignore the notice or the debtors do not understand the notice. He suggests that the notice of the proposed modification be served on both the debtor and the debtor's lawyer, and that the motion to modify the plan have a clear notice informing the debtor of the nature of the changes in the amounts and timing of payments as well as the need for a formal objection.
4. N. Idaho Debtors' Counsel. Opposes Rule 3015(g) in that it requires notice of a proposed modification to be served on all creditors, whether or not the creditors are affected by the modification or have filed proofs of claim. This causes needless expense, and triggers telephone calls to the trustee's office or debtor's attorney's office. Suggests that the notice be sent only to those creditors who are or may be affected by the modification.
5. Justice Dept. Opposes the proposed change to the extent that it could be read to eliminate the need for a hearing on confirmation where no objection is filed. If so, it conflicts with §§ 1224 and 1324 of the Code. In a footnote, the writer notes that the language of Rule 3020 wrongly implies that the "after notice and hearing" doctrine applies to confirmation hearings, and then he notes that the language in the amended Rule 3015 may be an improvement.

Rule 3018. Acceptance or Rejection of Plans

1. Justice Dept. The proposed change would exclude chapter 12 and chapter 13 cases from the scope of Rule 3018(c) (requiring written acceptance by secured creditors). This change would encourage the "deemed acceptance" practice in which a secured creditor is deemed to have accepted the plan in the absence of an objection. The writer opposes the "deemed acceptance" approach.

Rule 5005. Filing and Transmittal of Papers

1. Ms. Ippongi. Comments that the proposed amendment to Rule 5005 is unclear. For example, if a petition is presented on forms no longer in use, is the clerk mandated to file it? If a pleading contains no original signature of the submitting party as is required by Rule 9011, is the clerk mandated to accept the pleading?

2. Mr. Craig. Opposes the proposed change to Rule 5005. There is sufficient justification for not treating bankruptcy clerks and district court clerks the same because bankruptcy is so "paper intensive." Because of the volume of paper that comes into the bankruptcy court, it is essential to have procedural conformity. Since a petition triggers the automatic stay, "an unscrupulous debtor can file a petition which he knows will eventually be dismissed, to cause the automatic stay to frustrate creditors." He suggests that the concern that a party may be prejudiced merely on a "procedural technicality" may be remedied by using one of several alternatives now being used by courts:

(a) "Lodging," which allows the clerk to retain (without docketing or filing) papers tendered to the court for the purpose of tolling the statute of limitations, and giving the filer a period in which to amend and preserve its rights;

(b) "Dated rejection," in which the clerk time stamps the paper as "tendered" and then returns them to the filer, giving the filer an opportunity to ask the judge for a reconsideration or determination that it may be filed using the "tendered" date as the filing date; or

(c) "Acceptance with drop dead procedure," in which the paper is accepted for filing, but (according to prior judicial authorization) an order is issued that the subject of the paper be dismissed without further notice or hearing if the deficiencies are not corrected within a certain time period.

3. Mr. Wroten. Opposes the proposed amendment to Rule 5005 because the enforcement thereof would "bring chaos" to the clerk's office. He believes that "no judge of the U.S. Bankruptcy Court would have the time to accord judicial remedies for the prolific errors that appear in mountains of ill prepared paperwork." He argues that the proposed amendment is inconsistent with the 1991 promulgation of new Official Forms with mandatory substantial compliance therewith. He suggests that the pre-filing screening procedure now in use in his district (using a system of pre-filing deficiency notices in which deficient paperwork is retained pending substitution of corrected paperwork) is a better alternative. He believes that

similar pre-screening filing systems are used in most districts.

4. Ms. Schueler. Opposes the proposed amendment for the same reasons as expressed by the other commentators. She explains why the proposed change would not be workable and encloses a local rule and form used to reject defective papers (approximately 150 of these rejection notices are used each week!).

5. Mr. Cauthen. A former law clerk, the writer opposes the proposed amendment and believes it would be unworkable unless Congress is willing to commit substantial resources needed to enforce it. In the his district in South Carolina, more bench time, a new pro se clerk, and at least two additional deputy clerks would be needed. He describes how this proposal would have an adverse impact on the bar, the public and the courts. He gives several examples of problems it could cause (if a joint petition is filed by an individual and a corporation, is there a stay in effect as to the creditors?). He points out serious practical problems, and says that the proposal would mean that the clerk will no longer be the gate keeper for inaccurate or incorrect pleadings, it will be the judge.

6. Judge Pearson. Strongly supports the proposed amendment. Says that clerks in his district have "unbridled discretion to accept or reject petitions filed by debtors" since the Chief Judge of the district vacated his order that prohibited clerks from rejecting petitions due to incorrect form. This creates automatic stay and foreclosure problems, etc. This is a special problem in rural areas where a clerk's rejection of a petition due to improper form could result in an 8 to 10 day delay, thereby causing the loss of property due to foreclosures.

Judge Pearson wrote again to clarify that he did not attend a meeting of judges in his district in August 1991 at which the Chief Judge issued an order that requires the clerk to reject all petitions that do not comply with the new Official Form. He enclosed a copy of the order and of a letter from the clerk in his district, Mr. Craig, expressing Mr. Craig's view that the clerk has no discretion in the rejection of petitions.

7. Mr. Bolton. Opposes the proposed change which would "not only severely restrain the Federal Judiciary in its further development of effective and expeditious administration and management of bankruptcy cases, but will also destroy many significant systems and procedures now in place which have saved thousands and thousands of hours in time and expense to the judges and their staffs." He emphasizes the time-intensive and paper-intensive practice in bankruptcy courts as contrasted to the practice in district courts. The concept of "notice and

hearing" is significant in moving cases by entering orders in the absence of objection. The "burden for driving this process has been shifted from the court to the practitioners," which has "increased the need for the Clerk to spend considerable time correcting improper work of the attorneys and their staffs."

Mr. Bolton describes different systems used over the years to deal with the increasing problem caused by defective papers. During a study done in 1988, it was discovered that 28% of the documents tendered for filing were defective and required special handling (they receive 2,000 documents each day). A bankruptcy judgeship study team visited the court for a determination of the need for additional judges and, at their suggestion, the current system was adopted. A standing order now requires the clerk to reject certain documents that do not conform to the Code or Rules. The court adopted a "Memorandum Returning Unfiled Document" form (copy attached to his letter), which lists the reasons for it being defective. He claims that this helped educate the bar and has resulted in a decrease in defective papers. The proposed rule change will prohibit use of this procedure and will result in an increase in defective papers.

Also, the rule will affect standing orders and local rules that prohibit the filing of certain unwanted documents, such as uncontested discovery documents.

If the rule is changed to prohibit the clerk from rejecting defective papers, Mr. Bolton suggests that the rule include exceptions for the following categories of documents: (1) initial petitions and accompanying documents which are so deficient or defective as to prevent initial notice to creditors; and (2) any other paper which contains so significant an error, omission, or defect in basic form or identification that it can not be processed as submitted. Also, any paper so rejected should be date-stamped and returned to permit the party to seek an order allowing the nunc pro tunc filing of a corrected paper. If the Committee feels that the authority to reject a paper rests only with the judge, he recommends that the Rule specifically authorize the court to sua sponte strike the paper without notice and hearing.

8. Mr. Allsburg. Speaking on behalf of himself and the judges in his district, Mr. Allsburg, a clerk, points out two ambiguities in the proposed language: (1) the proposed change could be read to mean that it applies only with respect to petitions or other papers that are intended as the functional equivalent of petitions (and not to any other papers), or could be read to refer to all papers that are presented for filing; and (2) the rule refers to rejection of papers solely because of form. What about unsigned papers, or papers signed by only one of two necessary parties? Copies without original signatures?

Objections to discharge that are written as letters to the judge?
Are these matters of form? Substance?

His personal opinion is that the rule will do little if anything because of how different courts will interpret it (again, what is "form"?). He recognizes that the rule attempts to address "real problems that need to be addressed" regarding clerks who bounce papers that are in any way defective. The problem is aggravated by local rules which create all sorts of new forms and procedures unknown to practitioners from other districts. However, the proposed solution creates even greater problems for the courts and for bankruptcy administration: (1) ambiguity in the rule "begs judges to circumvent the obvious intent" and will result in many different interpretations; (2) the enormous amount of defective papers - if the clerk must accept them, they are passed along to judges, trustees, and opposing attorneys who have to use them, force corrections, or "live with the garbage;" (3) it is the clerk's responsibility to maintain the quality and integrity of the files - by removing the power to reject pleadings, clerks lose the most effective (perhaps only) tool to prevent rampant abuse; (4) the rule shifts the burden of quality control from the filing attorney to the court; and (5) the rule attempts to "dump this problem on the judges who are not inclined to think of this as their problem."

He suggests an alternative to the proposed rule that would permit the clerk to reject papers, but permitting very liberal judicial review of such actions and "deemed acceptance" of corrected pleadings on the date of receipt of the defective (and subsequently returned) pleadings. He recommends language for the proposed change.

9. Judge Fenning. Strongly opposes the change. It will cause significant administrative problems if clerks are required to accept all papers. At the hearing on February 28, 1992, Judge Fenning submitted a written report summarizing a study done in the Central District of California which shows the volume and type of deficiencies in papers presented for filing in the clerk's office.

Judge Fenning testified at the public hearing and emphasized the administrative problems that would be caused by the proposed change. She also submitted to the Committee a memorandum ("Analysis of Impact of Proposed Amendment to Rule 5005") on a study conducted in C.D. Cal. regarding defective papers that are presented for filing. Judge Fenning also described the problem that exists in the Central District involving "bankruptcy mills" who file petitions for debtor/tenants for the sole purpose of obtaining a certified copy of the filed petition so that it could implement the automatic stay against eviction of the debtor. She claims that these cases are often dismissed for nonpayment of the

unpaid installment filing fees or for the debtor's failure to file schedules or otherwise move the case forward. By giving the clerks the power to reject defective papers, many of these abusive cases will not succeed because the quality of the papers are usually poor.

10. Mr. Kay. Opposes the change. Suggests a "lodging" procedure which preserves the original date presented for filing if the defect is cured. If the defective paper is filed, then it requires docketing and other action. He also suggests that there is an ambiguity in the language of the proposed amendment in that the "other paper presented for that purpose" could be taken to mean "other paper presented for the purpose of commencing a case."

11. Mr. Klein. Favors the change as long overdue. This will relieve the clerks of the burden of reviewing the content of papers.

12. Mr. Stone. Wants the amendment broadened.

13. Ms. Weil. Opposes the change. Although there is a need to protect the public from rejection of papers for minor non-compliance, in large districts, such as C.D. Cal., this could cause problems because of the number of deficient papers. Suggests that the rule provide that the clerk may not "unreasonably" refuse to accept a paper for filing.

14. Mr. Sergeant. In favor of the proposed amendment. It will be a substantial benefit to legal services corporations providing services to the poor, and is in accordance with the general practice in other courts.

15. Mr. Ericson. Informed the Committee of the results of a survey of pleading deficiencies during the period February 25th to 27th, 1992, conducted in the Central District of California. He testified as to the high number of deficiencies and the practical problems and increased expense that the proposed amendment to Rule 5005 would cause if the clerk is required to accept all papers for filing.

16. Ms. Martens. Discussed the practical problems that would be caused by the proposed Rule on the three automated systems now in use in the Central District of California (VANCAP, BANS, and ICF), which gather statistical information through the noticing function and automated docketing. The proposed amendment would impact severely on these systems because the needed information would be missing if not provided in the petition.

17. Ms. Lewis. Testified regarding the unlawful detainer and "bankruptcy mill" problem in the Ninth Circuit that is the subject of a task force study in the Circuit.

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

1. Judge Fenning. Supports the change.
2. Mr. Stone. This change, which eliminates the need for an actual hearing in the absence of an objection or request for a hearing, should include a requirement that the court make an independent finding that the proposed action benefits the estate.

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

1. Judge Fenning. Supports the change.
2. Mr. Stone. This change, which eliminates the need for an actual hearing in the absence of an objection or request for a hearing, should include a requirement that the court make an independent finding that the proposed action benefits the estate.

Rule 6007. Abandonment or Disposition of Property

1. Judge Fenning. Supports the change.
2. Mr. Stone. This change, which eliminates the need for an actual hearing in the absence of an objection or request for a hearing, should include a requirement that the court make an independent finding that the proposed action benefits the estate.

Rule 9019. Compromise and Arbitration

1. Mr. Mitsch. Suggests that this rule be amended to encompass hearings on reaffirmations because they are often negotiated as a way to settle objections to discharge. Also, bankruptcy courts are "still confused" over the 1984 amendments that made reaffirmation hearings discretionary, instead of mandatory. He says that some courts still view them as mandatory even if the debtor's lawyer has stated that the reaffirmation was voluntary and not an undue hardship. He suggests that the rule could avoid unnecessary reaffirmation hearings that crowd court dockets.

2. Judge Fenning. Supports the change.

3. Mr. Stone. This change, which eliminates the need for an actual hearing in the absence of an objection or request for a hearing, should include a requirement that the court make an independent finding that the proposed action benefits the estate.

Rule 9036. Notice by Electronic Transmission

1. Mr. Burton. Opposes the proposed new rule because of the difficulty in implementing electronic noticing without large scale increases in automation and personal resources.
2. Ms. Schueler. Questions whether electronic noticing will be less costly or more efficient for the courts. The letter raises potential technological problems and the inability to delegate noticing functions to chapter 7 or chapter 13 trustees. Suggests additional funding prior to implementation.
3. Mr. Bodoff. Suggests a change in the language of the proposed amendment to make it clear in the rule that it applies only if the requesting entity "and the clerk or other person responsible for providing notice agree . . ." He also suggests language to make it clear that the requesting party could ask that it be used "in one or more cases pending before the court or in future cases."
4. Judge Fenning. Supports the proposed new rule.
5. Mr. Kay. Supports the idea of using electronic transmission, but is concerned that the reference to "electronic confirmation" of notice will create some new element or document that the clerk will have to track. Suggests that the rule or committee note clarify the clerk's duties.
6. Mr. Stone. The proposed rule could be read to allow fax transmissions. The rule should make it clear that it is, or is not, allowing fax transmissions.

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

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CHAIRMAN

JOSEPH F. SPANIOL, JR.
SECRETARY

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SAM C. POINTER, JR.
CIVIL RULES
WILLIAM TERRELL HODGES
CRIMINAL RULES
EDWARD LEAVY
BANKRUPTCY RULES

May 7, 1992

TO: Hon. Robert E. Keeton, Chairman
Standing Committee on Rules of Practice and Procedure

FROM: Hon. Edward Leavy, Chairman
Advisory Committee on Bankruptcy Rules

SUBJECT: Proposed Amendment Subject to Substantial Controversy

The proposed amendment to Bankruptcy Rule 5005(a) is the only proposed change that has been the subject of substantial controversy.¹ The amendment provides that the clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by the Bankruptcy Rules or local rules or practices. This amendment is substantially the same as the 1991 amendment to Rule 5(e) of the Federal Rules of Civil Procedure, which is currently applicable to adversary proceedings in bankruptcy courts pursuant to Bankruptcy Rule 7005.

Seventeen responses were received from the bench and bar regarding the proposed amendment to Rule 5005(a). Nine clerks and one former clerk opposed the proposal. Two bankruptcy judges responded, one in favor and one opposed to the amendment. Three practicing lawyers are in favor and one is opposed to the change. An assistant circuit executive testified regarding the high volume of bankruptcy petitions, often defective in form, that are filed by tenants for the sole purpose of delaying eviction proceedings.

¹ Proposed amendments to Rule 3002 that were included in the Preliminary Draft of Proposed Amendments published for comment in August, 1991, also have been the subject of substantial controversy, but have been deleted from the proposed amendments that will be presented by the Advisory Committee to the Standing Committee in June, 1992.

Commentators in opposition to the proposed amendment have argued that it will cause significant administrative problems because clerks will be required to accept and process papers that are not in proper form, including those that do not conform to the official forms. Bankruptcy courts are more "paper intensive" than district courts in that bankruptcy practice involves a high volume of filed papers, and it is more difficult and expensive to administer bankruptcy cases if papers are not in proper form. Opponents have argued that it would not be practical to rely on judicial remedies administered by judges to deal with the high volume of defective papers.

A bankruptcy judge from the Central District of California also has argued that rejection of papers that are not in proper form is helpful in dealing with the many cases in that district in which tenants file petitions for the sole purpose of delaying eviction. Petitions filed to delay eviction in Los Angeles are often prepared by so-called "bankruptcy mills," and often are not in proper form. It has been argued that it is an abuse of the bankruptcy laws to file a petition for the sole purpose of delaying eviction, and that the clerk's power to reject defective papers helps to prevent some of this abuse.

A bankruptcy judge in favor of the proposed change has complained that clerks in his district now have unbridled discretion to accept or reject bankruptcy petitions. Attorneys in favor of the proposed amendment have argued that it will be beneficial, especially to legal services organizations providing services to the poor.

The Advisory Committee, after consideration of the comments received and extensive discussion at two meetings, voted (8 in favor, 2 opposed) to approve the proposed amendment to Rule 5005(a). The view of the Advisory Committee is that it is not desirable to permit clerks to refuse to accept a document for filing, especially when the act of filing the petition or other document has serious legal consequences. This view is consistent with the policy of the 1991 amendment to Rule 5(e) of the Federal Rules of Civil Procedure. It is the function of a judge, not a clerk, to decide that a paper is legally insufficient to constitute a valid petition or other document. Problems caused by "bankruptcy mills" who often file defective papers to delay evictions should be solved through legislation or otherwise, but not by permitting clerks to reject petitions that are not in proper form.

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EDWARD LEAVY
BANKRUPTCY RULES

May 6, 1992

TO: Hon. Robert E. Keeton, Chairman
Standing Committee on Rules of Practice and Procedure

FROM: Hon. Edward Leavy, Chairman
Advisory Committee on Bankruptcy Rules

SUBJECT: Proposed Amendments to the Bankruptcy Rules Regarding
Local Rules and Technical Amendments, and Duplication
of Numbers in National Rules

At its meeting in January 1992, the Standing Committee adopted three resolutions that require action by the advisory committees.

I. Uniform Numbering of Local Rules and Prohibition on Local Rules that Duplicate National Rules.

The Standing Committee adopted the following resolution:

"That the Advisory Committees propose amendments to rule 83, criminal rule 57, appellate rule 47, and bankruptcy rule 9029, by June 1992, said proposed amendments to be along the following lines: Local rules shall be numbered in a uniform system approved by the Judicial Conference of the United States patterned after rules prescribed under sections 2075 and 2072 of title 28, United States Code. Local rules shall not repeat provisions contained in these rules."

The Standing Committee requested that the various Advisory Committees communicate with each other to achieve uniformity in

language regarding the various national rules that deal with local rule numbering. The Advisory Committee on Bankruptcy Rules, in adopting proposed amendments, considered, and used as a model for style, a draft of a proposed amendment to Civil Rule 83 that the Reporter received from Hon. Sam C. Pointer, Jr., Chairman of the Advisory Committee on Civil Rules, in February 1992.

At its meeting on March 26, 1992, the Advisory Committee on Bankruptcy Rules approved proposed amendments to Bankruptcy Rule 9029 (copy attached as Exhibit A). In addition, similar amendments to Bankruptcy Rule 8018 were approved by the Advisory Committee (copy attached as Exhibit B), which deals with local rules governing appeals to the bankruptcy appellate panel or district court. Although Rule 8018 was not mentioned in the Standing Committee resolution, that rule also governs local rules and should be amended. The Reporter to the Advisory Committee on Bankruptcy Rules transmitted copies of these proposed amendments to the Reporters to the other advisory committees on April 2, 1992.

The attached exhibits also indicate amendments to change the phrase "not inconsistent with" to "consistent with" in Rules 9029 and 8018. Civil Rule 83 is being amended at this time to change "not inconsistent with" to "consistent with" so that the language will conform to that found in 28 U.S.C. § 2071. Similar changes should be made to the Bankruptcy Rules for the sake of uniformity of style.

II. Technical Amendments.

The Standing Committee adopted the following resolution:

"That the Advisory Committees shall propose amendments to the rules providing, in substance, as follows: The Judicial Conference of the United States shall have power to correct typographical and clerical errors or other purely verbal or formal matters in rules. The Reporters should confer to achieve uniform language in the amendments to be proposed."

Prior to the meeting of the Advisory Committee on Bankruptcy Rules in March, the Committee had received from Judge Pointer a draft of a proposed amendment to Civil Rule 84 regarding technical amendments to the rules. The draft received from Judge Pointer was considered by the Advisory Committee.

The draft of the proposed amendment to Civil Rule 84 places the provision dealing with technical amendments to the rules in the rule that now governs only the official forms. The Advisory Committee on Bankruptcy Rules believes that it would be more appropriate to add a new rule dealing with technical corrections to the rules because that subject is separate from the subject of official forms. The only common thread that these two subjects have is that the Judicial Conference may make the changes, but the Advisory Committee does not believe that that is a sufficient reason to combine them into one rule.

Attached as Exhibit C is a draft of a new rule, Bankruptcy Rule 9037, dealing with technical corrections that was approved by the Advisory Committee at the March meeting. The language on the draft is based on similar language in the draft received from

Judge Pointer. However, the Advisory Committee departed from Judge Pointer's draft to some extent because of its concern that the rule be very limited and that it not permit non-technical amendments that conform to statutory changes.

The Advisory Committee's vote in favor of the proposed new rule on technical amendments was premised on the understanding that the purpose of this rule is to make it unnecessary to bring minor technical changes to the Supreme Court and Congress, but it is not the purpose of this rule to have rules or committee notes drafted by anyone other than the Advisory Committee.

III. Duplication of Numbers Within Existing Federal Rules.

The Standing Committee adopted the following resolution:

"That the various advisory committees report to the Standing Committee, by November 30, 1992, concerning the need for and appropriateness of a numbering system of the various Federal Rules that would end duplication of numbers within existing Federal Rules."

The Advisory Committee discussed this resolution at its meeting on March 26th. The consensus of the Committee is that there is no need to end duplication of numbers and that the current numbering system is working well.

The Advisory Committee also believes that, if duplication of numbers is to end, the Bankruptcy Rules should be the only body of rules that uses four digits. All Bankruptcy Rules have four digit numbers. The Civil, Appellate, and Criminal Rules do not use any four digits numbers. Although there are four digit numbers in the Evidence Rules (Evidence Rules 1001-1008, 1101-

1103), most of the Evidence Rules have three digit numbers. Moreover, there are historical reasons for the use of four digits for all Bankruptcy Rules. The former Bankruptcy Rules, that were repealed and replaced by the current Rules in 1983, used three digits. The use of four digits was deliberate so that confusion between the old and the new rules would be minimized. Another change in the Bankruptcy Rule numbering system at this time would cause further confusion and should be avoided.

Exhibit A

Rule 9029. Local Bankruptcy Rules

1 Each district court by action of a majority of the judges
2 thereof may make and amend rules governing practice and procedure
3 in all cases and proceedings within the district court's
4 bankruptcy jurisdiction which are ~~not inconsistent~~ consistent
5 with, but not duplicative of, these rules and which do not
6 prohibit or limit the use of the Official Forms. Rule 83
7 F.R.Civ.P. governs the procedure for making local rules. A
8 district court may authorize the bankruptcy judges of the
9 district, subject to any limitation or condition it may prescribe
10 and the requirements of 83 F.R.Civ.P., to make and amend rules of
11 practice and procedure which are ~~not inconsistent~~ consistent
12 with, but not duplicative of, these rules and which do not
13 prohibit or limit the use of the Official Forms. Local rules
14 made by a district court or by bankruptcy judges pursuant to this
15 rule shall be numbered or identified in conformity with any
16 uniform system prescribed by the Judicial Conference of the
17 United States. In all cases not provided for by rule, the court
18 may regulate its practice in any manner ~~not inconsistent~~
19 consistent with the Official Forms ~~or~~ and with these rules or
20 those of the district in which the court acts.

21

COMMITTEE NOTE

1 This rule is amended to prohibit local rules that are merely
2 duplicative of, or a restatement of, the Federal Rules of
3 Bankruptcy Procedure. This restriction is designed to prevent
4 possible conflicting interpretations arising from minor

5 inconsistencies between the wording of national and local rules,
6 and to lessen the risk that any significant local practices may
7 be overlooked by inclusion in local rules that are unnecessarily
8 long. The prohibitions contained in this rule apply to local
9 rules that are inconsistent with, or duplicative of, the Federal
10 Rules of Civil Procedure that are incorporated by reference or
11 made applicable by these rules.

12

13 This rule is amended further to require that local rules be
14 numbered or identified in conformity with any uniform numbering
15 system that may be prescribed by the Judicial Conference. A
16 uniform numbering or identification system would make it easier
17 for the bar that is increasingly national in scope to locate a
18 local rule that is applicable to a particular procedural issue.

19

20 The change in the phrase "not inconsistent with" to
21 "consistent with" is stylistic and conforms to similar amendments
22 to Rule 8018 and F.R.Civ.P. 83, and to the language in 28 U.S.C.
23 § 2071.

Exhibit B

Rule 8018. Rules by Circuit Councils and District Courts

1 Circuit councils which have authorized bankruptcy appellate
2 panels pursuant to 28 U.S.C. § 158(b) and the district courts may
3 by action of a majority of the judges of the council or district
4 court make and amend rules governing practice and procedure for
5 appeals from orders or judgments of bankruptcy judges to the
6 respective bankruptcy appellate panel or district court, ~~not~~
7 inconsistent consistent with, but not duplicative of, the rules
8 of this Part VIII. Rule 83 F.R.Civ.P. governs the procedure for
9 making and amending rules to govern appeals. Local rules made
10 pursuant to this rule shall be numbered or identified in
11 conformity with any uniform system prescribed by the Judicial
12 Conference of the United States. In all cases not provided for
13 by rule, the district court or the bankruptcy appellate panel may
14 regulate its practice in any manner ~~not inconsistent~~ consistent
15 with, but not duplicative of, these rules.

COMMITTEE NOTE

1 This rule is amended to prohibit local rules that are merely
2 duplicative of, or a restatement of, Part VIII of the Federal
3 Rules of Bankruptcy Procedure. This rule is amended further to
4 require that local rules be numbered or identified in conformity
5 with any uniform numbering system that may be prescribed by the
6 Judicial Conference. See the Committee Note to Rule 9029.
7
8 The change in the phrase "not inconsistent with" to
9 "consistent with" is stylistic and conforms to similar amendments
10 to Rule 9029 and F.R.Civ.P. 83, and to the language in 28 U.S.C.
11 § 2071.

Exhibit C

Rule 9037. Technical Amendments.

1 The Judicial Conference of the United States may amend these
2 rules to make them consistent in form and style with statutory
3 changes and to correct errors in grammar, spelling, cross-
4 references, typography, and other similar technical matters of
5 form and style.

COMMITTEE NOTE

1 This rule is added to enable the Judicial Conference to make
2 minor technical amendments to these rules without having to
3 burden the Supreme Court or Congress with such changes. This
4 delegation of authority will lessen the delay and administrative
5 burdens that can encumber the rule-making process on minor non-
6 controversial, non-substantive matters. For example, this
7 authority would have been useful to make the change in the Rule
8 2005 that became necessary when the new title of "Magistrate
9 Judge" replaced the title "Magistrate" as a result of a statutory
10 change.