

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

Agenda E-18 (Appendix A)
Rules
September 2003

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TO: Honorable Anthony J. Scirica, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable A. Thomas Small, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 27, 2003

RE: Report of the Advisory Committee on Bankruptcy
Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on April 3-4, 2003, in Longboat Key, Florida. The Advisory Committee considered public comments regarding a proposed amendment to Bankruptcy Rule 9014 that was published in August 2002. The Advisory Committee received only four comments on the proposed amendment to the Rule. Since no person who submitted a written comment requested to appear at the public hearing scheduled for January 24, 2003, the hearing was canceled. The Advisory

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Committee also considered technical amendments to Bankruptcy Rules 1011 and 2002(g) as well as a new Official Form for the submission of a debtor's social security number as required by amendments to Bankruptcy Rules 1007 and 2002 that will become effective on December 1, 2003.

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The Advisory Committee considered the written comments on the proposed amendment to Bankruptcy Rule 9014, and approved the proposal and will present it to the Standing Committee at its June 2003 meeting for final approval and transmission to the Judicial Conference. The amendment to Bankruptcy Rule 9014 is set out in Part II A of this Report.

The amendments to Bankruptcy Rules 1011 and 2002(g) are technical and are submitted to the Standing Committee without prior publication and comment. The amendment to Rule 1011 simply conforms a cross reference in that rule to reflect a recent amendment to another Bankruptcy Rule. The amendment to Rule 2002(g) changes the address for mailing notices to the Internal Revenue Service because of a change in the structure of the Service. A new Official Form 21 is proposed to implement the restrictions on the publication of a debtor's social security number. The amendments to Bankruptcy Rules 1011 and 2002(g) and Official Form 21 are set out in Part II B of this Report.

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II Action Items

A. Proposed Amendments to Bankruptcy Rule 9014
Submitted for Final Approval by the Standing Committee
and Submission to the Judicial Conference.

1. *Public Comment.*

The preliminary draft of the proposed amendment to Bankruptcy Rule 9014 was published for comment in August 2002. A public hearing on the preliminary draft was scheduled for January 24, 2003. There were no requests to appear at the hearing. There were four comments on the proposal, and they are summarized below. The Advisory Committee reviewed these comments and approved the amendment to the rule as published.

2. *Synopsis of Proposed Amendment*

Rule 9014 is amended to limit the applicability of the mandatory disclosure provisions of Rule 26 of the Federal Rules of Civil Procedure made applicable in contested matters in bankruptcy cases by Bankruptcy Rule 7026. Contested matters typically are resolved more quickly than the time that would elapse under the normal application of the mandatory disclosure provisions of Fed. R. Civ. P. 26. Those disclosure requirements continue to apply in adversary proceedings, and the court can order that they apply in a particular contested matter.

*B. Rules and Official Form Amendments Proposed
Without Public Comment.*

The Advisory Committee considered technical amendments to Bankruptcy Rules 1011 and 2002(g). The Advisory Committee approved the amendments to the rules and submits that the nature of these amendments is such that there is no need for publication and comment on the proposed amendments. The Advisory Committee recommends that the Standing Committee approve the amendments for submission to the Judicial Conference.

The Advisory Committee also considered a new Official Form 21. This form implements the amendment to Rule 1007(f) that becomes effective on December 1, 2003, in the absence of Congressional action. The form provides the mechanism for the debtor to submit a social security number to the court so that creditors and other parties in interest can identify the debtor while maintaining the debtor's privacy. The Advisory Committee recommends that the Standing Committee approve the Official Form for submission to the Judicial Conference with an effective date of December 1, 2003.

1. *Synopsis of Proposed Rules Amendments and New
Official Form:*

- (a) Rule 1011 is amended to delete a cross reference to Rule 1004(b). The cross reference should be to Rule 1004 because that rule was amended recently such that the rule no longer includes any subdivisions.

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- (b) Rule 2002(g) is amended to reflect the restructuring of the Internal Revenue Service. The Service no longer includes a District Director, so the rule is amended to provide that notices should be mailed to the address set out by the Service in the register maintained by the clerk of the Bankruptcy Court.

- (c) Official Form 21 is a new form that a debtor must submit to the court setting out the debtor's social security number. The Form implements the recently approved amendments to Bankruptcy Rule 1007 adopted to further the Judicial Conference's privacy protection policy.

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

1 * * * * *

2 (j) NOTICES TO THE UNITED STATES. Copies of
3 notices required to be mailed to all creditors under this rule
4 shall be mailed (1) in a chapter 11 reorganization case, to the
5 Securities and Exchange Commission at any place the
6 Commission designates, if the Commission has filed either a
7 notice of appearance in the case or a written request to receive
8 notices; (2) in a commodity broker case, to the Commodity
9 Futures Trading Commission at Washington, D.C.; (3) in a
10 chapter 11 case, to the ~~District Director~~ of Internal Revenue
11 Service at its address set out in the register maintained under
12 Rule 5003(e) for the district in which the case is pending; (4)
13 if the papers in the case disclose a debt to the United States
14 other than for taxes, to the United States attorney for the
15 district in which the case is pending and to the department,

16 agency, or instrumentality of the United States through which
 17 the debtor became indebted; or (5) if the filed papers disclose
 18 a stock interest of the United States, to the Secretary of the
 19 Treasury at Washington, D.C.

20 * * * * *

COMMITTEE NOTE

The rule is amended to reflect that the structure of the Internal Revenue Service no longer includes a District Director. Thus, rather than sending notice to the District Director, the rule now requires that the notices be sent to the location designated by the Service and set out in the register of addresses maintained by the clerk under Rule 5003(e). The other change is stylistic.

Rule 9014. Contested Matters

1 * * * * *

2 (c) APPLICATION OF PART VII RULES. Except as
 3 otherwise provided in this rule, and unless ~~Unless~~ the court
 4 directs otherwise, the following rules shall apply: 7009, 7017,
 5 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056,
 6 7064, 7069, and 7071. The following subdivisions of Fed. R.

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7 Civ. P. 26, as incorporated by Rule 7026, shall not apply in a
8 contested matter unless the court directs otherwise: 26(a)(1)
9 (mandatory disclosure), 26(a)(2) (disclosures regarding expert
10 testimony) and 26(a)(3) (additional pre-trial disclosure), and
11 26(f) (mandatory meeting before scheduling
12 conference/discovery plan). An entity that desires to
13 perpetuate testimony may proceed in the same manner as
14 provided in Rule 7027 for the taking of a deposition before an
15 adversary proceeding. The court may at any stage in a
16 particular matter direct that one or more of the other rules in
17 Part VII shall apply. The court shall give the parties notice of
18 any order issued under this paragraph to afford them a
19 reasonable opportunity to comply with the procedures
20 prescribed by the order.

21 * * * * *

COMMITTEE NOTE

The rule is amended to provide that the mandatory disclosure requirements of Fed. R. Civ. P. 26, as incorporated by Rule 7026, do not apply in contested matters. The typically short time between the commencement and resolution of most contested matters makes the mandatory disclosure provisions of Rule 26 ineffective. Nevertheless, the court may by local rule or by order in a particular case provide that these provisions of the rule apply in a contested matter.

Public Comment on Proposed Amendments to Rule 9014:

1. Gary L. Keplinger, Deputy General Counsel, United States General Accounting Office, submitted a letter indicating that his office had no comments on the proposal.
2. Thomas J. Yerbich, Court Rules Attorney for the District of Alaska, supports the proposed amendment to Rule 9014 and also suggested that the rule include a specific reference to the court's authority to issue a local rule governing mandatory discovery matters.
3. Professor Anthony Michael Sabino, Associate Professor at St. John's University School of Business, supports the proposed amendment to Rule 9014 and suggested an addition to the Committee Note to reiterate that the court has the power to require the application of all or some of Civil Rule 26 in appropriate circumstances.

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4. Kent F. Hofmeister, Esq., President, Federal Bar Association, stated that the Federal Bar Association supports the amendment to Rule 9014.

Changes Made After Publication. No changes since publication.

Form B 21 Official Form 21
(12/03)

FORM 21. STATEMENT OF SOCIAL SECURITY NUMBER

[Caption as in Form 16A.]

STATEMENT OF SOCIAL SECURITY NUMBER(S)

1. Name of Debtor (enter Last, First, Middle): _____
(Check the appropriate box and, if applicable, provide the required information.)

/ Debtor has a Social Security Number and it is: _ _ - _ - _ _ _

(If more than one, state all.)

/ Debtor does not have a Social Security Number.

2. Name of Joint Debtor (enter Last, First, Middle): _____
(Check the appropriate box and, if applicable, provide the required information.)

/ Joint Debtor has a Social Security Number and it is: _ _ - _ - _ _ _

(If more than one, state all.)

/ Joint Debtor does not have a Social Security Number.

I declare under penalty of perjury that the foregoing is true and correct.

X _____
Signature of Debtor Date

X _____
Signature of Joint Debtor Date

*Joint debtors must provide information for both spouses.
Penalty for making a false statement: Fine of up to \$250,000 or up to 5 years imprisonment or both. 18 U.S.C. §§ 152 and 3571.

COMMITTEE NOTE

The form implements Rule 1007(f), which requires a debtor to submit a statement under penalty of perjury setting out the debtor's Social Security number. The form is necessary because Rule 1005 provides that the caption of the petition includes only the final four digits of the debtor's Social Security number. The statement provides the information necessary for the clerk to include the debtor's full Social Security number on the notice of the meeting of creditors, as required under Rule 2002(a)(1). Creditors in a case, along with the trustee and United States trustee or bankruptcy administrator, will receive the full Social Security number on their copy of the notice of the meeting of creditors. The copy of that notice which goes into the court file will show only the last four digits of the number.

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