

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

DAVID F. LEVI
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

CARL E. STEWART
APPELLATE RULES

THOMAS S. ZILLY
BANKRUPTCY RULES

LEE H. ROSENTHAL
CIVIL RULES

SUSAN C. BUCKLEW
CRIMINAL RULES

JERRY E. SMITH
EVIDENCE RULES

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

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

DATE: May 24, 2006 (Revised June 30, 2006)

RE: Report of the Advisory Committee on Bankruptcy Rules

I. INTRODUCTION

The Advisory Committee on Bankruptcy Rules met on March 8-10, 2006, in Chapel Hill, North Carolina. As a result of that meeting and other actions, the Advisory Committee recommends a series of Action Items to the Standing Committee. . . . Second, the Committee recommends that the Standing Committee approve for publication in August 2006 the proposed new and amended rules set out in Part II.B.2 of this report. . . . Finally, the Advisory Committee recommends that the new and amended Official Forms as set out in Part II.D.2 of the report be approved for publication in August 2006.

* * * * *

The Advisory Committee has spent considerable time on the creation of Interim Rules to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the 2005 Act). President Bush signed the 2005 Act on April 20, 2005, and most of its provisions became effective on October 17, 2005. The Advisory Committee prepared Interim Rules to operate in cases governed by the 2005 Act until final rules could be put in place. The Interim Rules were approved by the Standing Committee and were adopted by standing order in every district in the United States. These adoptions were nearly uniform throughout the country with only a few minor variations in the rules as locally adopted. The Interim Rules comprise the bulk of the package of new rules and rules amendments being recommended for publication.

The proposed rules recommended for publication also include amendments and additions that were not included in the package of Interim Rules that became effective by standing orders on October 17, 2005. For example, one provision of the 2005 Act does not become effective until a rule has been promulgated under the Rules Enabling Act process. Consequently, there was no need to include that rule in the Interim Rules, but the changes in the Bankruptcy Code require the adoption of new rules to implement those provisions. The Committee received and considered various comments to the Interim Rules prior to its meeting in March, and the proposed Rules have incorporated these comments as appropriate.

The report includes a statement at the end of each rule or rule amendment being recommended for publication as to whether the proposal was previously approved as an Interim Rule. That statement also identifies any changes in the recommended version of the rule to the existing Interim Rule. While there were changes to many of the Interim Rules, most of the changes were stylistic. More significant amendments were made to Interim Rules 1007, 1010(b), 1011(f), 2002(g)(5), 2015(a)(6), 3002(c)(5), 4003, 4008, and 8001(f)(5). The amendments to Rules 1005, 2015.3, 3016(d), 5001, and 9009 are entirely new and were not included in the Interim Rules. The 2005 Act requires the amendments to Rules 1005, 2015.3, 3016(d) and 9009, while the amendments to Rule 5001 are necessary because of the amendment to 28 U.S.C. § 152(c), which authorizes bankruptcy judges to hold court outside of their districts in emergency situations. Attached to the report is a chart that states the number of the rule being proposed for publication, whether a change in the rule was required by the 2005 Act, whether it was an Interim Rule, and the extent of the change in the rule from the Interim Rule. These rules are set out in Part II.B.2 of the report.

* * * * *

The 2005 Act also required the amendment or creation of many Official Forms. Because the forms must be uniform to be truly useful in cases, the amendments and additions to the forms were recommended to the Judicial Conference for its approval in August and October of 2005. The Judicial Conference approved the forms which became effective on October 17, 2005. Time did not allow for the publication of these forms for comment, so the Advisory Committee recommends that the Official Forms that became effective on October 17, 2005, be published for comment along with the Interim Rules. As with the Interim Rules, the Official Forms being proposed for publication also include some minor amendments from those currently in use. The use of the Official Forms and Interim Rules since October 2005 provides a unique opportunity for the Advisory Committee to evaluate the proposed rules and the Official Forms and should enable the bench and bar to offer especially valuable commentary on their workings. The amendments and additions to the Official Forms which are recommended for publication are described in Part II.D.1.

* * * * *

II. ACTION ITEMS

* * * * *

B. Proposed Amendments to Bankruptcy Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 8001, 8003, 9006, and 9009. Proposed new Bankruptcy Rules: 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, 5012, and 6011.:

The Advisory Committee recommends that the Standing Committee approve the following proposed amendments to the Bankruptcy Rules and Official Forms for publication for comment.

1. Synopsis of Proposed New Rules and Amendments to Bankruptcy Rules.

(a) **Rule 1005 (conforming)** contains an amendment to require the disclosure of all names used by the debtor in the past eight years to implement the provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the 2005 Act) that extends the time between discharges from six to eight years. The rule is also amended to include an individual debtor's taxpayer-identification number among the information that must be limited to protect the debtor's privacy.

(b) **Rule 1006 (conforming)** is amended to implement the provisions in the 2005 Act that, for the first time on a nationwide basis, authorize the courts to waive the payment of filing fees by debtors. The amendment directs the debtor to use the Official Form for requesting a fee waiver. The amendment also permits the court to allow the payment of the filing fee in installments even if the debtor has made a payment to an attorney in connection with the case.

(c) **Rule 1007 (conforming)** is amended to reflect the expanded obligations of debtors to file a variety of documents and materials by the 2005 Act. The amendments address the filing of current monthly income statements and other forms to implement the means test imposed by the 2005 Act. There are also changes to require debtors to file additional materials such as payment advices and education income retirement accounts, as well as certificates for the completion of credit counseling and financial management programs mandated by the legislation. The rule is also amended to recognize the limitation on the extension of the time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added to the Bankruptcy Code by the 2005 Act, establishes a specific

standard for the courts to apply in the event that the debtor in possession or the trustee seeks an extension for the filing of these forms for a period beyond 30 days after the order for relief. Finally, the rule is amended to require that any entity filing a petition for recognition to commence a case under chapter 15 of the Code file a list of entities with whom the debtor is engaged in litigation in the United States. This chapter was added to the Code by the 2005 Act. The recognition of a foreign proceeding makes § 362 of the Code operative in the case, so the amendment to the rule requires the entity filing a petition for recognition to file a list of parties to pending litigation with the debtor. These entities can then be notified prior to the imposition of the automatic stay that the petitioner has sought relief under chapter 15.

(d) **Rule 1009 (technical)** is amended to correct a cross reference to the Bankruptcy Code due to the restructuring of § 521 of the Code by the 2005 Act.

(e) **Rule 1010 (conforming)** is amended to implement the changes to the Bankruptcy Code made by the 2005 Act. It repealed § 304 of the Code and replaced it with chapter 15 governing both ancillary and cross-border cases. Under that chapter, a foreign representative commences a case by filing a petition for recognition of a pending foreign proceeding. This amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. The rule also provides that the court may direct that service be made on additional entities as appropriate.

(f) **Rule 1011 (technical)** is amended to reflect the enactment of the 2005 Act which repealed § 304 of the Code and added chapter 15 to the Code. Section 304 covered cases “ancillary to foreign proceedings,” while chapter 15 of the Code governs cross-border insolvencies and introduces the concept of a petition for recognition of a foreign proceeding. The amendment implements this new terminology.

(g) **Rule 1015 (technical)** is amended to change the cross references in the rule to conform to the renumbered subsections of the provision of the Bankruptcy Code as amended by the 2005 Act.

(h) **Rule 1017 (conforming)** is amended to implement the amendments to § 707(b) of the Code by the 2005 Act that permit parties in interest to move to dismiss the chapter 7 case of an individual whose debts are primarily consumer debts as abusive. The amendments to subdivision (e) of the rule preserve the time limits already in

place for § 707 motions. The rule also requires that a motion filed under § 707(b)(3) state with particularity the circumstances that present the alleged abuse.

(i) **Rule 1019 (conforming)** is amended because the 2005 Act is likely to lead to more conversions of cases to and from chapters 7 and 13. The amendments preserve deadlines for motions to dismiss a case under § 707(b) upon conversion of a case from chapter 13 to chapter 7.

(j) **Rule 1020** is essentially a new rule that reflects the change in the definition of a small business debtor made by the 2005 Act. The former rule is deleted, and the new rule provides a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor. It also provides procedures for bringing to the court disputes regarding the proper characterization of the debtor. Because it is important to resolve such disputes early in the case, a time limit for objecting to the debtor's self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule. Subdivision (c), which relates the presence and activity of a committee of unsecured creditors, is designed to be consistent with the Code's definition of "small business debtor."

(k) **Rule 1021** is new. It is added to the rules to implement § 101(27A) of the Code, added by the 2005 Act. That section defines health care businesses, and the rule authorizes parties in interest to seek an order identifying a debtor as a health care business. The debtor, in a voluntary case and the petitioning creditors in an involuntary case will make the health care business identification on the petition. If a party in interest disagrees with the determination by the debtor or petitioning creditors that the debtor is not a health care business, the party can move for an order designating the debtor as a health care business.

(l) **Rule 2002 (conforming and otherwise)** is amended to reflect the revisions to

§ 704 of the Bankruptcy Code in the 2005 Act requiring the court to provide a copy to all creditors of a statement by the United States trustee as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

The rule is also amended in several respects to implement amendments made to the business provisions of the Code by the 2005 Act. Subdivision (b) is amended to require that notice of a hearing on the approval of a plan to serve as a disclosure statement be given in a small business case in chapter 11. Subdivision (p)(1) is added to the rule to give the court flexibility to direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses now required by § 1514(d) of the Code. This portion of the rule recognizes that the court has discretion to establish procedures to determine, on its own initiative, whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest. Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court also may shorten the additional notice time if circumstances so warrant.

Finally, Rule 2002 is amended to implement the provisions of chapter 15 of the Bankruptcy Code. Subdivision (q) is added to the rule to require that notice be given to the debtor and entities against whom provisional relief is sought of a hearing on a petition for recognition of a foreign proceeding. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

(m) **Rule 2003 (technical)** is amended to implement the 2005 Act's amendment to § 341(e) of the Code. The amendment to the rule authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened if the debtor had solicited acceptances of a plan prior to the commencement of the case. The amended rule recognizes that a meeting of creditors may not be held in those cases.

(n) **Rule 2007.1 (conforming)** is amended to reflect the change in the manner of the election and appointment of trustees in chapter 11 cases. The 2005 Act reduces somewhat the role of the United States trustee in the appointment process, so the amendments to Rule 2007.1 limit that role and require the elected trustee to file an affidavit setting forth information regarding that person's connections with creditors and others with an interest in the case.

(o) **Rule 2007.2 (conforming)** is new. It is added to the rules to govern the appointment of a health care ombudsman in the first 30 days of all health care business cases unless the court finds that the appointment is not necessary for the protection of patients. This is a new obligation created by § 333 of the Code added by the 2005 Act. The rule recognizes this obligation and provides that any party in interest that believes that the appointment of a health care ombudsman is unnecessary in the case must file its objection to the appointment within the first twenty days of the case. That entity also must notify other interested parties that the objection has been filed. The court will then consider the objection and determine whether to order the United States trustee to make the appointment. In the absence of any timely objections, the court will enter an order directing the United States trustee to appoint the ombudsman. The rule also permits parties in interest to file motions either to appoint or terminate the appointment of these ombudsmen, and it sets forth the procedure for approving the appointment.

(p) **Rule 2015 (conforming)** is amended by inserting a new subdivision (d) to implement § 1518 added to the Code by the 2005 Act. That section directs the

foreign representative to make reports to the court, and the rule sets the time for the filing of those reports. Former subdivision (d) is renumbered as subdivision (e).

(q) **Rule 2015.1** is new. It is added to implement § 333(b) and (c) added to the Code by the 2005 Act. The rule requires ten days notice of reports to be made by the health care ombudsman and sets out the entities to whom the notice must be given. The rule permits the notice to relate to a single report or to periodic reports to be given throughout the course of the case. That is, the notice may serve as notice of all reports to be given by the ombudsman at specified intervals during the case. Interested parties will then be able to review the written reports or attend the hearings at which oral reports might be given. The rule also implements § 333(c)(1) added to the Code by the 2005 Act. The statute requires court approval of the ombudsman's review of the patient records with the imposition of appropriate restrictions to protect the confidentiality of the records. The rule requires the ombudsman to notify the United States trustee, the patient, and any family member or contact person whose name and address have been given to the trustee or the debtor that the ombudsman is seeking access to otherwise confidential patient records. This provides an opportunity for the patient and United States trustee to appear and be heard on the matter and should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality. A notice given under the rule is expressly made subject to applicable nonbankruptcy laws governing patient privacy.

(r) **Rule 2015.2 (conforming)** is new. It is added to implement § 704(a)(12) which was added to the Code by the 2005 Act. That section authorizes the trustee to relocate patients when a health care business debtor's facility is being closed. The statute permits the trustee to take this action without the need for any order from the court, but the notice required by this rule will enable patients who contend that the trustee's actions violate § 704(a)(12) to have those issues resolved. A notice given under the rule is expressly made subject to applicable nonbankruptcy laws governing patient privacy.

(s) **Rule 2015.3** is new. It implements § 419 of the 2005 Act by requiring the filing of periodic reports of the value and profitability of any entity in which the debtor has a substantial or controlling interest. Reports are to be made on the appropriate Official Form. While § 419 of the 2005 Act places the obligation to report upon the “debtor,” the rule extends the obligation to include cases in which a trustee has been appointed. The rule also establishes procedures for the determination of the applicability of the rule to specific debtors. Under the rule, the court can order that the reports not be filed in appropriate circumstances, such as when the information that would be included in these reports is already available to interested parties.

(t) **Rule 3002 (conforming and otherwise)** is amended to conform to changes in the Code made by the 2005 Act. Under § 502(b)(9), governmental units asserting claims based on tax returns filed under § 1308 during a chapter 13 case have a different time period for filing proofs of those claims. Paragraph (c)(1) is amended to conform to §502(b)(9).

The rule is also amended to implement § 1514(d) which was added to the Bankruptcy Code by the 2005 Act. Subdivision (c)(6) gives the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim.

(u) **Rule 3003 (technical)** is amended to implement § 1514(d), which was added to the Code by the 2005 Act, by making the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases.

(v) **Rule 3016 (conforming)** is amended to recognize that the 2005 Act added §1125(f)(1) to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is

intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1 and is subject to all other rules applicable to disclosure statements in small business cases.

(w) **Rule 3017.1 (technical)** is amended to implement the 2005 Act's amendment to the Bankruptcy Code that permits the court in a small business chapter 11 case to conditionally approve a plan intended to provide adequate information. The plan is then treated as a disclosure statement under this rule.

(x) **Rule 3019 (conforming)** is amended because the 2005 Act added to the Bankruptcy Code a provision for the modification of plans filed by individual debtors in chapter 11 cases. The rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.

(y) **Rule 4002 (conforming)** is amended to implement the provisions of the 2005 Act that expand the obligation of debtors to provide additional evidence of personal identity, current income, and recent Federal income tax returns or tax transcripts. Amendments to the rule had been published for comment in August 2004, and this amendment carries forward from that proposed amendment the debtor's obligation to provide evidence of financial accounts existing at the time of the commencement of the case.

(z) **Rule 4003 (conforming)** is amended to reflect the 2005 Act's addition of § 522(q) to the Code. Section 522(q) imposes a \$125,000 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider issues relating to § 522 late in the case, and thus the 30-day period for objections would not be appropriate for this provision. Thus, a new subdivision (b)(2) is added to provide a separate time limit for this provision.

(aa) **Rule 4004 (conforming)** is amended to implement several provisions added to the Bankruptcy Code by the 2005 Act. The amendments address the postponement of the court's entry of a discharge pending the debtor's completion of a financial management program as well as the need to postpone the discharge to consider whether the debtor has committed a felony or owes a debt arising from certain causes of action within a particular time frame.

(bb) **Rule 4006 (conforming)** is amended to reflect the 2005 Act's revision of the Bankruptcy Code that requires individual debtors to complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, no discharge will be entered, but the case may be closed. The amended rule provides notice to parties in interest, including the debtor, that no discharge was entered.

(cc) **Rule 4007 (conforming)** is amended because the 2005 Act expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c). Subdivision (d) is amended to establish a deadline for filing a complaint in a chapter 13 case only for § 523(a)(6), rather than for all of the categories of claims under § 523(c).

(dd) **Rule 4008 (conforming)** is amended to reflect the 2005 Act's addition of §§ 524(k)(6)(A) and 524(m) to the Bankruptcy Code. The provisions require that a debtor file a signed statement in support of a reaffirmation, and authorize a court to review the agreements if, based on the assertions on the statement, the agreement is presumed to be an undue hardship. The rule revision requires that an accompanying statement show the total income and expense figures from schedules I and J and an explanation of any discrepancies. This will allow the court to evaluate the reaffirmation for undue hardship as § 524(m) requires.

(ee) **Rule 5001** is amended to permit bankruptcy judges to hold hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the 2005 amendment to 28 U.S.C. § 152(c).

(ff) **Rule 5003 (technical)** is amended to implement the addition of § 505(b) (1) to the Code by the 2005 Act. That section allows taxing authorities to designate addresses to use for the service of a request under that subsection.

(gg) **Rule 5008** is new. The 2005 Act revised § 342 of the Bankruptcy Code to require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, this rule requires that the clerk send a second notice.

(hh) **Rule 5012 (conforming)** is new. It is added to implement § 1525 of the Code which was added by the 2005 Act. The rule provides an opportunity for parties in the case to take appropriate action prior to the communication between courts to establish procedures for the manner of the communication and the right to participate in the communication.

(ii) **Rule 6004 (conforming)** is amended to implement sections 332 and 363(b)(1)(B) of the Code, added by the 2005 Act. Those sections require the appointment of a consumer privacy ombudsman in certain circumstances when a debtor proposes to sell personally identifiable information.

(jj) **Rule 6011** is new. It is added to implement § 351(1) which was added to the Code by the 2005 Act. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The statute also requires that individualized notice be sent to each patient and every family member and other contact person to whom the debtor is providing information about the patient's health. Subdivisions (a) and (b) establish minimum requirements for notices to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (c) directs the trustee to maintain proof of compliance with § 351(1)(B), but it prohibits filing the proof of compliance unless the court orders the trustee to file it under seal because the proof of compliance may contain patient names that should or must remain confidential. Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. Again, notices under this rule are expressly made subject to applicable nonbankruptcy laws governing patient privacy.

(kk) **Rule 8001 (conforming)** is amended to implement the direct appeal provisions in the 2005 Act. The 2005 Act amended 28 U.S.C. § 158 to authorize appeals directly to the courts of appeals upon certification either by the bankruptcy or district court or the bankruptcy appellate panel. Certification is also available to the parties either on request to the court, or if all of the parties agree. The rule also provides that review by the court of appeals, which is at its discretion, requires that a party file a timely notice of appeal.

(ll) **Rule 8003 (conforming)** is amended to implement the direct appeal provisions included in the 2005 Act. It provides that a certification by the lower court or the allowance of leave to appeal by the court of appeals is deemed to satisfy the requirement for leave to appeal even if no motion for leave to appeal has been filed.

(mm) **Rule 9006 (technical)** is amended to recognize that extensions of time for filing schedules and a statement of financial affairs by small business debtors cannot be extended beyond the time set in § 1116(3) of the Code, which was added by the 2005 Act. This amendment operates in tandem with the amendment to Rule 1007(c) to recognize this restriction on expanding the time to file these documents in small business cases.

(nn) **Rule 9009 (technical)** is amended to provide that a plan proponent in a small business chapter 11 case need not use an Official Form of a plan of reorganization and disclosure statement. Absent the amendment, the Official Form would have to be used, and the 2005 Act anticipates the use of both an Official Form and a form that is adopted by local courts.

2. Text of Proposed New Rules and Amendments to Bankruptcy Rules.

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

Rule 1005. Caption of Petition

1 The caption of a petition commencing a case under the
2 Code shall contain the name of the court, the title of the case,
3 and the docket number. The title of the case shall include the
4 following information about the debtor: name, employer
5 identification number, last four digits of the social-security
6 number or individual debtor's taxpayer-identification number,
7 any other federal ~~tax~~ taxpayer-identification number, and all
8 names used within ~~six~~ eight years before filing the petition.
9 If the petition is not filed by the debtor, it shall include all
10 names used by the debtor which are known to the petitioners.

*New material is underlined; matter to be omitted is lined through.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

COMMITTEE NOTE

The rule is amended to require the disclosure of all names used by the debtor in the past eight years. Section 727(a)(8) was amended in 2005 to extend the time between chapter 7 discharges from six to eight years, and the rule is amended to implement that change. The rule also is amended to require the disclosure of the last four digits of an individual debtor's taxpayer-identification number. This truncation of the number applies only to individual debtors. This is consistent with the requirements of Rule 9037.

INTERIM RULES COMPARISON:

This Rule was not included in the Interim Rules.

Rule 1006. Filing Fee

1 (a) GENERAL REQUIREMENT. Every petition shall
2 be accompanied by the filing fee except as provided in
3 subdivisions (b) and (c) of this rule. For the purpose of this
4 rule, "filing fee" means the filing fee prescribed by 28 U.S.C.
5 § 1930(a)(1)-(a)(5) and any other fee prescribed by the
6 Judicial Conference of the United States under 28 U.S.C.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

7 § 1930(b) that is payable to the clerk upon the
8 commencement of a case under the Code.

9 (b) PAYMENT OF FILING FEE IN INSTALLMENTS.

10 (1) *Application for Permission to Pay Filing Fee in*
11 *Installments.* A voluntary petition by an individual shall be
12 accepted for filing if accompanied by the debtor's signed
13 application, prepared as prescribed by the appropriate Official
14 Form, stating that the debtor is unable to pay the filing fee
15 except in installments. ~~The application shall state the~~
16 ~~proposed terms of the installment payments and that the~~
17 ~~applicant has neither paid any money nor transferred any~~
18 ~~property to an attorney for services in connection with the~~
19 ~~case.~~

20 * * * * *

21 (3) *Postponement of Attorney's Fees.* ~~The filing fee~~
22 All installments of the filing fee must be paid in full before

FEDERAL RULES OF BANKRUPTCY PROCEDURE

23 the debtor or chapter 13 trustee may make further payments
24 ~~pay an~~ to an attorney or any other person who renders
25 services to the debtor in connection with the case.

26 (c) WAIVER OF FILING FEE. A voluntary chapter 7
27 petition filed by an individual shall be accepted for filing if
28 accompanied by the debtor's application requesting a waiver
29 under 28 U.S.C. § 1930(f), prepared as prescribed by the
30 appropriate Official Form.

COMMITTEE NOTE

Subdivision (a) is amended to include a reference to new subdivision (c), which deals with fee waivers under 28 U.S.C. § 1930(f), which was added in 2005.

Subdivision (b)(1) is amended to delete the sentence requiring a disclosure that the debtor has not paid an attorney or other person in connection with the case. Inability to pay the filing fee in installments is one of the requirements for a fee waiver under the 2005 revisions to 28 U.S.C. § 1930(f). If the attorney payment prohibition were retained, payment of an attorney's fee would render many debtors ineligible for installment payments and thus enhance their eligibility for the fee waiver. The deletion of this prohibition from the rule, which was not statutorily required, ensures that debtors

FEDERAL RULES OF BANKRUPTCY PROCEDURE

8 recognition under chapter 15 shall file with the petition a list
9 containing the name and address of all administrators in
10 foreign proceedings of the debtor, all parties to litigation
11 pending in the United States in which the debtor is a party at
12 the time of the filing of the petition, and all entities against
13 whom provisional relief is being sought under § 1519 of the
14 Code.

15 ~~(4)~~ (5) *Extension of Time.* Any extension of time for
16 the filing of lists required by this subdivision may be granted
17 only on motion for cause shown and on notice to the United
18 States trustee and to any trustee, committee elected ~~pursuant~~
19 to under § 705 or appointed ~~pursuant to~~ under § 1102 of the
20 Code, or other party as the court may direct.

21 (b) SCHEDULES, AND STATEMENTS, AND OTHER
22 DOCUMENTS REQUIRED.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

23 (1) Except in a chapter 9 municipality case, the
24 debtor, unless the court orders otherwise, shall file the
25 following schedules, statements, and other documents,
26 prepared as prescribed by the appropriate Official Forms, if
27 any:

28 (A) schedules of assets and liabilities; ;

29 (B) a schedule of current income and
30 expenditures; ;

31 (C) a schedule of executory contracts and
32 unexpired leases; ~~and~~ ;

33 (D) a statement of financial affairs; ~~prepared as~~
34 ~~prescribed by the appropriate Official Forms~~ ;

35 (E) copies of all payment advices or other
36 evidence of payment, if any, received by the debtor from an
37 employer within 60 days before the filing of the petition, with
38 redaction of all but the last four digits of the debtor's social-

FEDERAL RULES OF BANKRUPTCY PROCEDURE

39 security number or individual taxpayer-identification number;

40 and

41 (F) a record of any interest that the debtor has in

42 an account or program of the type specified in § 521(c) of the

43 Code.

44 (2) An individual debtor in a chapter 7 case shall file

45 a statement of intention as required by § ~~521(a)~~ 521(2) of the

46 Code, prepared as prescribed by the appropriate Official

47 Form. A copy of the statement of intention shall be served on

48 the trustee and the creditors named in the statement on or

49 before the filing of the statement.

50 (3) Unless the United States trustee has determined

51 that the credit counseling requirement of § 109(h) does not

52 apply in the district, an individual debtor must file a statement

53 of compliance with the credit counseling requirement,

FEDERAL RULES OF BANKRUPTCY PROCEDURE

54 prepared as prescribed by the appropriate Official Form
55 which must include one of the following:

56 (A) an attached certificate and debt repayment
57 plan, if any, required by § 521(b);

58 (B) a statement that the debtor has received the
59 credit counseling briefing required by § 109(h)(1) but does
60 not have the certificate required by § 521(b);

61 (C) a certification under § 109(h)(3); or

62 (D) a request for a determination by the court
63 under § 109(h)(4).

64 (4) Unless § 707(b)(2)(D) applies, an individual
65 debtor in a chapter 7 case with primarily consumer debts shall
66 file a statement of current monthly income prepared as
67 prescribed by the appropriate Official Form, and, if the
68 current monthly income exceeds the median family income
69 for the applicable state and household size, the information,

FEDERAL RULES OF BANKRUPTCY PROCEDURE

70 including calculations, required by § 707(b), prepared as
71 prescribed by the appropriate Official Form.

72 (5) An individual debtor in a chapter 11 case shall file
73 a statement of current monthly income, prepared as
74 prescribed by the appropriate Official Form.

75 (6) A debtor in a chapter 13 case shall file a statement
76 of current monthly income, prepared as prescribed by the
77 appropriate Official Form, and, if the current monthly income
78 exceeds the median family income for the applicable state and
79 household size, a calculation of disposable income made in
80 accordance with § 1325(b)(3), prepared as prescribed by the
81 appropriate Official Form.

82 (7) An individual debtor in a chapter 7 or chapter 13
83 case shall file a statement of completion of a course
84 concerning personal financial management, prepared as
85 prescribed by the appropriate Official Form.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

86 (8) If an individual debtor in a chapter 11, 12, or 13
87 case has claimed an exemption under § 522(b)(3)(A) in
88 property of the kind described in § 522(p)(1) with a value in
89 excess of the amount set out in § 522(q)(1), the debtor shall
90 file a statement as to whether there is any proceeding pending
91 in which the debtor may be found guilty of a felony of a kind
92 described in § 522(q)(1)(A) or found liable for a debt of the
93 kind described in § 522(q)(1)(B).

94 (c) TIME LIMITS. In a voluntary case, the schedules,
95 ~~and statements, and other documents required by subdivision~~
96 (b)(1), (4), (5), and (6) other than the statement of intention,
97 shall be filed with the petition; or within 15 days thereafter,
98 except as otherwise provided in subdivisions (d), (e), (f), and
99 (h) of this rule. In an involuntary case, the list in subdivision
100 (a)(2), and the schedules, ~~and statements, and other~~
101 documents required by subdivision (b)(1) other than the

FEDERAL RULES OF BANKRUPTCY PROCEDURE

102 ~~statement of intention~~, shall be filed by the debtor within 15
103 days of the entry of the order for relief. In a voluntary case,
104 the documents required by paragraphs (A), (C), and (D) of
105 subdivision (b)(3) shall be filed with the petition. Unless the
106 court orders otherwise, a debtor who has filed a statement
107 under subdivision (b)(3)(B) shall file the documents required
108 by subdivision (b)(3)(A) within 15 days of the order for
109 relief. In a chapter 7 case, the debtor shall file the statement
110 required by subdivision (b)(7) within 45 days after the first
111 date set for the meeting of creditors under § 341 of the Code,
112 and in a chapter 13 case no later than the date when the last
113 payment was made by the debtor as required by the plan or
114 the filing of a motion for a discharge under § 1328(b). The
115 debtor shall file the statement required by subdivision (b)(8)
116 no earlier than the date of the last payment made under the
117 plan or the date of the filing of a motion for a discharge under

FEDERAL RULES OF BANKRUPTCY PROCEDURE

118 §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the Code. Lists,
119 schedules, ~~and~~ statements, and other documents filed prior to
120 the conversion of a case to another chapter shall be deemed
121 filed in the converted case unless the court directs otherwise.
122 Except as provided in § 1116(3), any ~~Any~~ extension of time
123 for the filing of the schedules, ~~and~~ statements, and other
124 documents required under this rule may be granted only on
125 motion for cause shown and on notice to the United States
126 trustee, ~~and to~~ any committee elected under § 705 or
127 appointed under § 1102 of the Code, trustee, examiner, or
128 other party as the court may direct. Notice of an extension
129 shall be given to the United States trustee and to any
130 committee, trustee, or other party as the court may direct.

131

* * * * *

COMMITTEE NOTE

The title of this rule is expanded to refer to “documents” in conformity with the 2005 amendments to § 521 and related

FEDERAL RULES OF BANKRUPTCY PROCEDURE

provisions of the Bankruptcy Code that include a wider range of documentary requirements.

Subdivision (a) is amended to require that any foreign representative filing a petition for recognition to commence a case under chapter 15, which was added to the Code in 2005, file a list of entities with whom the debtor is engaged in litigation in the United States. The foreign representative filing the petition for recognition must also list any entities against whom provisional relief is being sought as well as all administrators in foreign proceedings of the debtor. This should ensure that entities most interested in the case, or their representatives, will receive notice of the petition under Rule 2002(q).

Subdivision (b)(1) addresses schedules, statements, and other documents that the debtor must file unless the court orders otherwise and other than in a case under chapter 9. This subdivision is amended to include documentary requirements added by the 2005 amendments to § 521 that apply to the same group of debtors and have the same time limits as the existing requirements of (b)(1). Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, the payment advices should be redacted before they are filed.

Subdivision (b)(2) is amended to conform to the renumbering of the subsections of § 521.

Subdivisions (b)(3) through (b)(7) are new and implement the 2005 amendments to the Code. Subdivision (b)(3) provides for the filing of a document relating to the credit counseling requirement provided by the 2005 amendments to § 109 in the context of an Official Form that warns the debtor of the consequences of failing to comply with the credit counseling requirement.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Subdivision (b)(4) addresses the filing of information about current monthly income, as defined in § 101, for certain chapter 7 debtors and, if required, additional calculations of expenses required by the 2005 amendments to § 707(b).

Subdivision (b)(5) addresses the filing of information about current monthly income, as defined in § 101, for individual chapter 11 debtors. The 2005 amendments to § 1129(a)(15) condition plan confirmation for individual debtors on the commitment of disposable income, as defined in § 1325(b)(2), which is based on current monthly income.

Subdivision (b)(6) addresses the filing of information about current monthly income, as defined in § 101, for chapter 13 debtors and, if required, additional calculations of expenses. These changes are necessary because the 2005 amendments to § 1325 require that the determination of disposable income begin with current monthly income.

Subdivision (b)(7) reflects the 2005 amendments to §§ 727 and 1328 of the Code that condition the receipt of a discharge on the completion of a personal financial management course, with certain exceptions. To evidence compliance with that requirement, the subdivision requires the debtor to file the appropriate Official Form certifying that the debtor has completed the personal financial management course.

Subdivision (b)(8) is amended to require an individual debtor in a case under chapter 11, 12, and 13 to file a statement that there are no reasonable grounds to believe that the restrictions on a homestead exemption as set out in § 522(q) of the Code are applicable. Sections

FEDERAL RULES OF BANKRUPTCY PROCEDURE

1141(d)(5)(C), 1228(f), and 1328(h) each provide that the court shall not enter a discharge order unless it finds that there is no reasonable cause to believe that § 522(q) applies. Requiring the debtor to submit a statement to that effect in cases under chapters 11, 12, and 13 in which an exemption is claimed in excess of the amount allowed under § 522(q)(1) provides the court with a basis to conclude, in the absence of any contrary information, that § 522(q) does not apply. Creditors receive notice under Rule 2002(f)(11) of the time to request postponement of the entry of the discharge to permit an opportunity to challenge the debtor's assertions in the Rule 1007(b)(8) statement in appropriate cases.

Subdivision (c) is amended to include time limits for the filing requirements added to subdivision (b) due to the 2005 amendments to the Code, and to make conforming amendments. Separate time limits are provided for the documentation of credit counseling and for the statement of the completion of the financial management course. While most documents relating to credit counseling must be filed with the voluntary petition, the credit counseling certificate and debt repayment plan can be filed within 15 days of the filing of a voluntary petition if the debtor files a statement under subdivision (b)(3)(B) with the petition.

Subdivision (c) of the rule is also amended to recognize the limitation on the extension of time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added to the Code in 2005, establishes a specific standard for courts to apply in the event that the debtor in possession or the trustee seeks an extension for filing these forms for a period beyond 30 days after the order for relief.

INTERIM RULES COMPARISON:

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Stylistic changes were made to subdivisions (a)(4), (b)(1)(E), and (b)(7). Subdivision (b)(3) was amended to require debtors to file a statement that sets out a list of possible circumstances relating to the requirement that debtors obtain credit counseling prior to the commencement of the case. Subdivision (c) is amended to permit the later filing of a certificate of credit counseling if the debtor has received the counseling prior to the filing of the petition but has not yet received the certificate of completion of the counseling.

Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements

1

* * * * *

2

(b) STATEMENT OF INTENTION. The statement of intention may be amended by the debtor at any time before the expiration of the period provided in § 521(a) ~~521(2)(B)~~ of the Code. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby.

7

* * * * *

COMMITTEE NOTE

Subdivision (b) is amended to conform to the 2005 amendments to § 521 of the Code.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

INTERIM RULES COMPARISON:

No change from the Interim Rule.

**Rule 1010. Service of Involuntary Petition and Summons;
Petition Commencing Ancillary Case For Recognition of
a Foreign Nonmain Proceeding**

1 (a) SERVICE OF INVOLUNTARY PETITION AND
2 SUMMONS; SERVICE OF PETITION FOR
3 RECOGNITION OF FOREIGN NONMAIN PROCEEDING.
4 On the filing of an involuntary petition or a petition
5 ~~commencing a case ancillary to~~ for recognition of a foreign
6 nonmain proceeding, the clerk shall forthwith issue a
7 summons for service. When an involuntary petition is filed,
8 service shall be made on the debtor. When a petition
9 ~~commencing an ancillary case~~ for recognition of a foreign
10 nonmain proceeding is filed, service shall be made on the
11 ~~parties against whom relief is sought pursuant to § 304(b)~~

FEDERAL RULES OF BANKRUPTCY PROCEDURE

12 debtor, any entity against whom provisional relief is sought
13 under § 1519 of the Code, and on any other parties party as
14 the court may direct. The summons shall be served with a
15 copy of the petition in the manner provided for service of a
16 summons and complaint by Rule 7004(a) or (b). If service
17 cannot be so made, the court may order that the summons and
18 petition be served by mailing copies to the party's last known
19 address, and by at least one publication in a manner and form
20 directed by the court. The summons and petition may be
21 served on the party anywhere. Rule 7004(e) and Rule 4(J) F.
22 R. Civ. P. apply when service is made or attempted under this
23 rule.

24 (b) CORPORATE OWNERSHIP STATEMENT. Each
25 petitioner that is a corporation shall file with the involuntary
26 petition a corporate ownership statement containing the
27 information described in Rule 7007.1.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

COMMITTEE NOTE

This rule is amended to implement the 2005 amendments to the Code, which repealed § 304 and replaced it with chapter 15 governing ancillary and other cross-border cases. Under chapter 15, a foreign representative commences a case by filing a petition for recognition of a pending foreign nonmain proceeding. The amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. Until the court enters a recognition order under § 1517, no stay is in effect unless the court enters some form of provisional relief under § 1519. Thus, only those entities against whom specific provisional relief is sought need to be served. The court may, however, direct that service be made on additional entities as appropriate.

This rule does not apply to a petition for recognition of a foreign main proceeding.

The rule is also amended by renumbering the prior rule as subdivision (a) and adding a new subdivision (b) requiring any corporate creditor that files or joins an involuntary petition to file a corporate ownership statement.

INTERIM RULES COMPARISON:

The rule was amended by redesignating Interim Rule 1010 as Rule 1010(a). Subdivision (b) is new. It requires the filing of a corporate ownership statement with the filing of an involuntary petition. This change is not required by the 2005 Act.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

- 15 ownership statement containing the information described in
16 Rule 7007.1.

COMMITTEE NOTE

The rule is amended to reflect the 2005 amendments to the Code, which repealed § 304 and added chapter 15. Section 304 covered cases ancillary to foreign proceedings, while chapter 15 governs ancillary and other cross-border cases and introduces the concept of a petition for recognition of a foreign proceeding.

The rule is also amended in tandem with the amendment to Rule 1010 to require the parties responding to an involuntary petition and a petition for recognition of a foreign proceeding to file corporate ownership statements to assist the court in determining whether recusal is necessary.

INTERIM RULES COMPARISON:

Interim Rule 1011(a) was not changed. Subdivision (f) is new. It requires the filing of a corporate ownership statement with the first paper filed in response to an involuntary petition. This change is not required by the 2005 Act.

**Rule 1015. Consolidation or Joint Administration of
Cases Pending in Same Court**

1

* * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

2 (b) CASES INVOLVING TWO OR MORE RELATED
3 DEBTORS. If a joint petition or two or more petitions are
4 pending in the same court by or against (1) a husband and
5 wife, or (2) a partnership and one or more of its general
6 partners, or (3) two or more general partners, or (4) a debtor
7 and an affiliate, the court may order the joint administration
8 of the estates. Prior to entering an order the court shall give
9 consideration to protecting creditors of different estates
10 against potential conflicts of interest. An order directing joint
11 administration of individual cases of a husband and wife
12 shall, if one spouse has elected the exemptions under § 522(b)
13 ~~(1)~~ (2) of the Code and the other has elected the exemptions
14 under § 522 (b)~~(2)~~ (3), fix a reasonable time within which
15 either may amend the election so that both shall have elected
16 the same exemptions. The order shall notify the debtors that
17 unless they elect the same exemptions within the time fixed

FEDERAL RULES OF BANKRUPTCY PROCEDURE

18 by the court, they will be deemed to have elected the
19 exemptions provided by § 522(b)(~~1~~) (2).

20 * * * * *

COMMITTEE NOTE

The rule is amended to conform to the change in the numbering of § 522(b) of the Code that was made as a part of the 2005 amendments. Former subsections (b)(1) and (b)(2) of § 522 were renumbered as subsections (b)(2) and (b)(3), respectively. The rule is amended to make to the parallel change.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Rule 1017. Dismissal or Conversion of Case; Suspension

1 * * * * *
2 (e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S
3 CHAPTER 7 CASE, OR CONVERSION TO A CASE
4 UNDER CHAPTER 11 or 13, FOR ~~SUBSTANTIAL~~
5 ABUSE. The court may dismiss or, with the debtor's
6 consent, convert an individual debtor's case for ~~substantial~~

FEDERAL RULES OF BANKRUPTCY PROCEDURE

7 abuse under § 707(b) only on motion ~~by the United States~~
8 ~~trustee or on the court's own motion~~ and after a hearing on
9 notice to the debtor, the trustee, the United States trustee, and
10 any other ~~entities~~ entity as the court directs.

11 (1) Except as otherwise provided in § 704(b)(2), a A
12 motion to dismiss a case for ~~substantial~~ abuse under § 707(b)
13 or (c) may be filed ~~by the United States trustee~~ only within 60
14 days after the first date set for the meeting of creditors under
15 § 341(a), unless, on request filed ~~by the United States trustee~~
16 before the time has expired, the court for cause extends the
17 time for filing the motion to dismiss. ~~The United States~~
18 ~~trustee party filing the motion~~ shall set forth in the motion all
19 matters to be considered ~~submitted to the court for its~~
20 ~~consideration~~ at the hearing. In addition, a motion to dismiss
21 under § 707(b)(1) and (3) shall state with particularity the
22 circumstances alleged to constitute abuse.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

23

* * * * *

COMMITTEE NOTE

Subdivision (e) is amended to implement the 2005 amendments to § 707 of the Code. These statutory amendments permit conversion of a chapter 7 case to a case under chapter 11 or 13, change the basis for dismissal or conversion from “substantial abuse” to “abuse,” authorize parties other than the United States trustee to bring motions under § 707(b) under certain circumstances, and add § 707(c) to create an explicit ground for dismissal based on the request of a victim of a crime of violence or drug trafficking. The conforming amendments to subdivision (e) preserve the time limits already in place for § 707(b) motions, except to the extent that § 704(b)(2) sets the deadline for the United States trustee to act. In contrast to the grounds for a motion to dismiss under § 707(b)(2), which are quite specific, the grounds under § 707(b)(1) and (3) are very general. Therefore, to enable the debtor to respond, subdivision (e) requires that motions to dismiss under § 707(b)(1) and (3) state with particularity the circumstances alleged to constitute abuse.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer’s Debt Adjustment Case, or Chapter 13 Individual’s Debt Adjustment Case to a Chapter 7 Liquidation Case

1

* * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

INTERIM RULES COMPARISON:

A minor stylistic change was made by substituting “but” for “provided that” in line 7 of the rule.

Rule 1020. ~~Election to be Considered a Small Business in a Chapter 11 Reorganization Case~~ Small Business Chapter 11 Reorganization Case

1 ~~In a chapter 11 reorganization case, a debtor that is a~~
2 ~~small business may elect to be considered a small business by~~
3 ~~filing a written statement of election not later than 60 days~~
4 ~~after the date of the order for relief.~~

5 (a) SMALL BUSINESS DEBTOR DESIGNATION. In
6 a voluntary chapter 11 case, the debtor shall state in the
7 petition whether the debtor is a small business debtor. In an
8 involuntary chapter 11 case, the debtor shall file within 15
9 days after entry of the order for relief a statement as to
10 whether the debtor is a small business debtor. Except as
11 provided in subdivision (c), the status of the case as a small

FEDERAL RULES OF BANKRUPTCY PROCEDURE

12 business case shall be in accordance with the debtor's
13 statement under this subdivision, unless and until the court
14 enters an order finding that the debtor's statement is incorrect.

15 (b) OBJECTING TO DESIGNATION. Except as
16 provided in subdivision (c), the United States trustee or a
17 party in interest may file an objection to the debtor's
18 statement under subdivision (a) no later than 30 days after the
19 conclusion of the meeting of creditors held under § 341(a) of
20 the Code, or within 30 days after any amendment to the
21 statement, whichever is later.

22 (c) APPOINTMENT OF COMMITTEE OF
23 UNSECURED CREDITORS. If a committee of unsecured
24 creditors has been appointed under § 1102(a)(1), the case
25 shall proceed as a small business case only if, and from the
26 time when, the court enters an order determining that the
27 committee has not been sufficiently active and representative

FEDERAL RULES OF BANKRUPTCY PROCEDURE

28 to provide effective oversight of the debtor and that the debtor
29 satisfies all the other requirements for being a small business.
30 A request for a determination under this subdivision may be
31 filed by the United States trustee or a party in interest only
32 within a reasonable time after the failure of the committee to
33 be sufficiently active and representative. The debtor may file
34 a request for a determination at any time as to whether the
35 committee has been sufficiently active and representative.

36 (d) PROCEDURE FOR OBJECTION OR
37 DETERMINATION. Any objection or request for a
38 determination under this rule shall be governed by Rule 9014
39 and served on: the debtor; the debtor's attorney; the United
40 States trustee; the trustee; any committee appointed under
41 § 1102 or its authorized agent, or, if no committee of
42 unsecured creditors has been appointed under § 1102, on the

FEDERAL RULES OF BANKRUPTCY PROCEDURE

- 43 creditors included on the list filed under Rule 1007(d); and on
44 any other entity as the court directs.

COMMITTEE NOTE

Under the Code, as amended in 2005, there are no longer any provisions permitting or requiring a small business debtor to elect to be treated as a small business. Therefore, the election provisions in the rule are eliminated.

The 2005 amendments to the Code include several provisions relating to small business cases under chapter 11. Section 101 includes definitions of “small business debtor” and “small business case.” The purpose of the new language in this rule is to provide a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor, and to provide procedures for resolving disputes regarding the proper characterization of the debtor. Because it is important to resolve such disputes early in the case, a time limit for objecting to the debtor’s self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule.

An important factor in determining whether the debtor is a small business debtor is whether the United States trustee has appointed a committee of unsecured creditors under § 1102, and whether such a committee is sufficiently active and representative. Subdivision (c), relating to the appointment and activity of a committee of unsecured creditors, is designed to be consistent with the Code’s definition of “small business debtor.”

FEDERAL RULES OF BANKRUPTCY PROCEDURE

INTERIM RULES COMPARISON:

Several stylistic changes were made to the rule. Since only the United States trustee can appoint a committee of unsecured creditors under § 1102, the reference to the United States trustee in subdivision (a) was deleted. The commas that set off the list of entities on whom service must be made under subdivision (d) was changed to a colon followed by semicolons to separate the entities.

Rule 1021. Health Care Business Case

- 1 (a) HEALTH CARE BUSINESS DESIGNATION.
2 Unless the court orders otherwise, if a petition in a case under
3 chapter 7, chapter 9, or chapter 11 states that the debtor is a
4 health care business, the case shall proceed as a case in which
5 the debtor is a health care business.
6 (b) MOTION. The United States trustee or a party in
7 interest may file a motion to determine whether the debtor is
8 a health care business. The motion shall be transmitted to the
9 United States trustee and served on: the debtor; the trustee;

FEDERAL RULES OF BANKRUPTCY PROCEDURE

10 any committee elected under § 705 or appointed under § 1102
11 of the Code or its authorized agent, or, if the case is a chapter
12 9 municipality case or a chapter 11 reorganization case and
13 no committee of unsecured creditors has been appointed
14 under § 1102, on the creditors included on the list filed under
15 Rule 1007(d); and any other entity as the court directs. The
16 motion shall be governed by Rule 9014.

COMMITTEE NOTE

Section 101(27A) of the Code, added by the 2005 amendments, defines a health care business. This rule provides procedures for designating the debtor as a health care business. The debtor in a voluntary case, or petitioning creditors in an involuntary case, make that designation by checking the appropriate box on the petition. The rule also provides procedures for resolving disputes regarding the status of the debtor as a health care business.

INTERIM RULES COMPARISON:

The commas that set off the list of entities on whom service must be made under subdivision (b) was changed to a colon followed by semicolons to separate the entities.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

14 approval of a disclosure statement or, under § 1125(f), to
15 make a final determination whether the plan provides
16 adequate information so that a separate disclosure statement
17 is not necessary; and (2) ~~the time fixed~~ for filing objections
18 and the hearing to consider confirmation of a chapter 9,
19 chapter 11, or chapter 13 plan.

20 (c) CONTENT OF NOTICE.

21 (1) *Proposed Use, Sale, or Lease of Property.*

22 Subject to Rule 6004 the notice of a proposed use, sale, or
23 lease of property required by subdivision (a)(2) of this rule
24 shall include the time and place of any public sale, the terms
25 and conditions of any private sale and the time fixed for filing
26 objections. The notice of a proposed use, sale, or lease of
27 property, including real estate, is sufficient if it generally
28 describes the property. The notice of a proposed sale or lease
29 of personally identifiable information under § 363(b)(1) of

FEDERAL RULES OF BANKRUPTCY PROCEDURE

30 the Code shall state whether the sale is consistent with any
31 policy prohibiting the transfer of the information.

32 * * * * *

33 (f) OTHER NOTICES. Except as provided in subdivision
34 (l) of this rule, the clerk, or some other person as the court
35 may direct, shall give the debtor, all creditors, and indenture
36 trustees notice by mail of:

- 37 (1) the order for relief;
- 38 (2) the dismissal or the conversion of the case to
39 another chapter, or the suspension of proceedings
40 under § 305;
- 41 (3) the time allowed for filing claims pursuant to
42 Rule 3002;
- 43 (4) the time fixed for filing a complaint objecting to
44 the debtor's discharge pursuant to § 727 of the Code
45 as provided in Rule 4004;

FEDERAL RULES OF BANKRUPTCY PROCEDURE

- 46 (5) the time fixed for filing a complaint to determine
47 the dischargeability of a debt pursuant to § 523 of the
48 Code as provided in Rule 4007;
- 49 (6) the waiver, denial, or revocation of a discharge as
50 provided in Rule 4006; (7) entry of an order
51 confirming a chapter 9, 11, or 12 plan; ~~and~~
- 52 (8) a summary of the trustee's final report in a
53 chapter 7 case if the net proceeds realized exceed
54 \$1,500;
- 55 (9) a notice under Rule 5008 regarding the
56 presumption of abuse;
- 57 (10) a statement under § 704(b)(1) as to whether the
58 debtor's case would be presumed to be an abuse under
59 § 707(b); and
- 60 (11) the time to request a delay in the entry of the
61 discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h).

FEDERAL RULES OF BANKRUPTCY PROCEDURE

62 Notice of the time fixed for accepting or rejecting a plan
63 pursuant to Rule 3017(c) shall be given in accordance with
64 Rule 3017(d).

65 * * * * *

66 (g) ADDRESSING NOTICES.

67 * * * * *

68 (2) Except as provided in § 342(f) of the Code, if If
69 a creditor or indenture trustee has not filed a request
70 designating a mailing address under Rule 2002(g)(1), the
71 notices shall be mailed to the address shown on the list of
72 creditors or schedule of liabilities, whichever is filed later. If
73 an equity security holder has not filed a request designating
74 a mailing address under Rule 2002(g)(1), the notices shall be
75 mailed to the address shown on the list of equity security
76 holders.

77 * * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

94 reimbursement of expenses. Notices to the United States
95 trustee shall be transmitted within the time prescribed in
96 subdivision (a) or (b) of this rule. The United States trustee
97 shall also receive notice of any other matter if such notice is
98 requested by the United States trustee or ordered by the court.
99 Nothing in these rules requires the clerk or any other person
100 to transmit to the United States trustee any notice, schedule,
101 report, application or other document in a case under the
102 Securities Investor Protection Act, 15 U.S.C. § 78aaa et. seq.

103 * * * * *

104 (p) NOTICE TO A FOREIGN CREDITOR.

105 (1) If, at the request of the United States trustee or a
106 party in interest, or on its own initiative, the court finds that
107 a notice mailed within the time prescribed by these rules
108 would not be sufficient to give a creditor with a foreign
109 address to which notices under these rules are mailed

FEDERAL RULES OF BANKRUPTCY PROCEDURE

110 reasonable notice under the circumstances, the court may
111 order that the notice be supplemented with notice by other
112 means or that the time prescribed for the notice by mail be
113 enlarged.

114 (2) Unless the court for cause orders otherwise, a
115 creditor with a foreign address to which notices under this
116 rule are mailed shall be given at least 30 days' notice of the
117 time fixed for filing a proof of claim under Rule 3002(c) or
118 Rule 3003(c).

119 (q) NOTICE OF PETITION FOR RECOGNITION OF
120 FOREIGN PROCEEDING AND OF COURT'S
121 INTENTION TO COMMUNICATE WITH FOREIGN
122 COURTS AND FOREIGN REPRESENTATIVES.

123 (1) *Notice of Petition for Recognition.* The clerk, or
124 some other person as the court may direct, shall forthwith
125 give the debtor, all administrators in foreign proceedings of

FEDERAL RULES OF BANKRUPTCY PROCEDURE

126 the debtor, all entities against whom provisional relief is
127 being sought under § 1519 of the Code, all parties to litigation
128 pending in the United States in which the debtor is a party at
129 the time of the filing of the petition, and such other entities as
130 the court may direct, at least 20 days' notice by mail of the
131 hearing on the petition for recognition of a foreign
132 proceeding. The notice shall state whether the petition seeks
133 recognition as a foreign main proceeding or foreign nonmain
134 proceeding.

135 *(2) Notice of Court's Intention to Communicate with*
136 *Foreign Courts and Foreign Representatives.* The clerk, or
137 some other person as the court may direct, shall give the
138 debtor, all administrators in foreign proceedings of the debtor,
139 all entities against whom provisional relief is being sought
140 under § 1519 of the Code, all parties to litigation pending in
141 the United States in which the debtor is a party at the time of

FEDERAL RULES OF BANKRUPTCY PROCEDURE

142 the filing of the petition, and such other entities as the court
143 may direct, notice by mail of the court's intention to
144 communicate with a foreign court or foreign representative as
145 prescribed by Rule 5012.

COMMITTEE NOTE

Subdivision (b) is amended to provide for 25 days' notice of the time for the court to make a final determination whether the plan in a small business case can serve as a disclosure statement. Conditional approval of a disclosure statement in a small business case is governed by Rule 3017.1 and does not require 25 days' notice. The court may consider this matter in a hearing combined with the confirmation hearing in a small business case.

Subdivision (c)(1) is amended to require that a trustee leasing or selling personally identifiable information under § 363(b)(1)(A) or (B) of the Code, as amended in 2005, include in the notice of the lease or sale transaction a statement as to whether the lease or sale is consistent with a policy prohibiting the transfer of the information.

Subdivisions (f)(9) and (10) are new. They reflect the 2005 amendments to §§ 342(d) and 704(b) of the Code. Section 342(d) requires the clerk to give notice to creditors shortly after the commencement of the case as to whether a presumption of abuse exists. Subdivision (f)(9) adds this notice to the list of notices that the clerk must give. Subdivision (f)(10) implements the amendment to § 704(b) which requires the court to provide a copy to all creditors of a statement by the United States trustee or bankruptcy

FEDERAL RULES OF BANKRUPTCY PROCEDURE

administrator as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

Subdivision (f)(11) is also added to provide notice to creditors of the debtor's filing of a statement in a chapter 11, 12, or 13 case that there is no reasonable cause to believe that § 522(q) applies in the case. This allows a creditor who disputes that assertion to request a delay of the entry of the discharge in the case.

Subdivision (g)(2) of the rule is amended because the 2005 amendments to § 342(f) of the Code permit creditors in chapter 7 and 13 individual debtor cases to file a notice with any bankruptcy court of the address to which the creditor wishes all notices to be sent. Rule 2002(g)(2) continues to operate in chapter 11 and 12 cases, and in chapter 7 cases when the debtor is not an individual. It also continues to apply in cases under chapters 7 and 13 if the creditor has not filed a notice under § 342(f). The amendment to Rule 2002(g)(2) therefore only limits that subdivision when a creditor files a notice under § 342(f).

New subdivision (g)(5) implements § 342(g)(1) which was added to the Code in 2005. Section 342(g)(1) allows a creditor to treat a notice as not having been brought to the creditor's attention, and so potentially ineffective, until it is received by a person or organizational subdivision that the creditor has designated to receive notices under the Bankruptcy Code. Under that section, the creditor must have established reasonable procedures for such notices to be delivered to the designated person or subdivision. The rule provides that, in order to challenge a notice under § 342(g)(1), a creditor must have filed the name and address of the designated notice recipient, as well as a description of the procedures for directing notices to that recipient, prior to the time that the challenged notice was issued. The

FEDERAL RULES OF BANKRUPTCY PROCEDURE

filing required by the rule may be made as part of a creditor's filing under § 342(f), which allows a creditor to file a notice of the address to be used by all bankruptcy courts or by particular bankruptcy courts to provide notice to the creditor in cases under chapters 7 and 13. Filing the name and address of the designated notice recipient and the procedures for directing notices to that recipient will reduce uncertainty as to the proper party for receiving notice and limit factual disputes as to whether a notice recipient has been designated and as to the nature of procedures adopted to direct notices to the recipient.

The list of notices to be transmitted to the United States trustee under subdivision (k) is amended to add notices given under subdivision (q).

Section 1514(d) of the Code, added in 2005, requires that such additional time as is reasonable under the circumstances be given to creditors with foreign addresses with respect to notices and the filing of a proof of claim. Thus, subdivision (p)(1) is added to this rule to give the court flexibility to direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses. If cause exists, such as likely delays in the delivery of mailed notices in particular locations, the court may order that notice also be given by email, facsimile, or private courier. Alternatively, the court may enlarge the notice period for a creditor with a foreign address. It is expected that in most situations involving foreign creditors, fairness will not require any additional notice or extension of the notice period. This rule recognizes that the court has discretion to establish procedures to determine, on its own initiative, whether relief under subdivision (p) is appropriate, but that the court is not required to establish such

FEDERAL RULES OF BANKRUPTCY PROCEDURE

procedures and may decide to act only on request of a party in interest.

Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days' notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court may also shorten the additional notice time if circumstances so warrant. For example, if the court in a chapter 11 case determines that supplementing the notice to a foreign creditor with notice by electronic means, such as email or facsimile, would give the creditor reasonable notice, the court may order that the creditor be given only 20 days' notice in accordance with Rule 2002(a)(7).

Subdivision (q) is added to require that notice of the hearing on the petition for recognition of a foreign proceeding be given to the debtor, all administrators in foreign proceedings of the debtor, entities against whom provisional relief is sought, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice of the court's intention to communicate with a foreign court or foreign representative under Rule 5012.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

INTERIM RULES COMPARISON:

A stylistic change was made to subdivision (b) by deleting as unnecessary the words “the time fixed” in line 17. Stylistic changes were made to subdivisions (q)(1) and (q)(2) by changing the order of the wording that identifies parties to litigation with the debtor. Subdivision (g)(5) was added to the rule to clarify the operation of § 342(g) of the Code. Subdivision (k) was amended to add to subdivision (q) notices to the list of items that parties must transmit to the United States trustee.

Rule 2003. Meeting of Creditors or Equity Security Holders

1 (a) DATE AND PLACE. Except as otherwise provided
2 in § 341(e) of the Code, in ~~In~~ a chapter 7 liquidation or a
3 chapter 11 reorganization case, the United States trustee shall
4 call a meeting of creditors to be held no fewer than 20 and no
5 more than 40 days after the order for relief. In a chapter 12
6 family farmer debt adjustment case, the United States trustee
7 shall call a meeting of creditors to be held no fewer than 20
8 and no more than 35 days after the order for relief. In a

FEDERAL RULES OF BANKRUPTCY PROCEDURE

9 chapter 13 individual's debt adjustment case, the United
10 States trustee shall call a meeting of creditors to be held no
11 fewer than 20 and no more than 50 days after the order for
12 relief. If there is an appeal from or a motion to vacate the
13 order for relief, or if there is a motion to dismiss the case, the
14 United States trustee may set a later date for the meeting.
15 The meeting may be held at a regular place for holding court
16 or at any other place designated by the United States trustee
17 within the district convenient for the parties in interest. If the
18 United States trustee designates a place for the meeting which
19 is not regularly staffed by the United States trustee or an
20 assistant who may preside at the meeting, the meeting may be
21 held not more than 60 days after the order for relief.

22 * * * * *

COMMITTEE NOTE

If the debtor has solicited acceptances to a plan before commencement of the case, § 341(e), which was added to the Code

FEDERAL RULES OF BANKRUPTCY PROCEDURE

by the 2005 amendments, authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened. The rule is amended to recognize that a meeting of creditors might not be held in those cases.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case

1

* * * * *

2

(b) ELECTION OF TRUSTEE.

3

* * * * *

4

(3) *Report of Election and Resolution of Disputes.*

5

(A) Report of Undisputed Election. If no dispute

6

arises out of the election ~~is not disputed~~, the United States

7

trustee shall promptly file a report of certifying the election,

8

including the name and address of the person elected and a

9

statement that the election is undisputed. The report shall be

10

accompanied by a verified statement of the person elected

FEDERAL RULES OF BANKRUPTCY PROCEDURE

11 setting forth that person's connections with the debtor,
12 creditors, any other party in interest, their respective attorneys
13 and accountants, the United States trustee, or any person
14 employed in the office of the United States trustee. The
15 United States trustee shall file with the report an application
16 for approval of the appointment in accordance with
17 subdivision (c) of this rule. The report constitutes
18 appointment of the elected person to serve as trustee, subject
19 to court approval, as of the date of entry of the order
20 approving the appointment.

21 (B) Dispute Arising Out of an Disputed Election.
22 If a dispute arises out of an the election is disputed, the
23 United States trustee shall promptly file a report stating that
24 the election is disputed, informing the court of the nature of
25 the dispute, and listing the name and address of any candidate
26 elected under any alternative presented by the dispute. The

FEDERAL RULES OF BANKRUPTCY PROCEDURE

27 report shall be accompanied by a verified statement by each
28 candidate elected under each alternative presented by the
29 dispute, setting forth the person's connections with the
30 debtor, creditors, any other party in interest, their respective
31 attorneys and accountants, the United States trustee, ~~and or~~
32 any person employed in the office of the United States
33 trustee. Not later than the date on which the report of the
34 disputed election is filed, the United States trustee shall mail
35 a copy of the report and each verified statement to any party
36 in interest that has made a request to convene a meeting under
37 § 1104(b) or to receive a copy of the report, and to any
38 committee appointed under § 1102 of the Code. ~~Unless a~~
39 ~~motion for the resolution of the dispute is filed not later than~~
40 ~~10 days after the United States trustee files the report, any~~
41 ~~person appointed by the United States trustee under § 1104(d)~~
42 ~~and approved in accordance with subdivision (c) of this rule~~

FEDERAL RULES OF BANKRUPTCY PROCEDURE

43 ~~shall serve as trustee. If a motion for the resolution of the~~
44 ~~dispute is timely filed, and the court determines the result of~~
45 ~~the election and approves the person elected, the report will~~
46 ~~constitute appointment of the elected person as of the date of~~
47 ~~entry of the order approving the appointment.~~

48 (c) APPROVAL OF APPOINTMENT. An order
49 approving the appointment of a trustee ~~elected under~~
50 ~~§ 1104(b) or appointed under § 1104(d), or the appointment~~
51 ~~of an examiner under § 1104(d) of the Code, shall be made on~~
52 application of the United States trustee. The application shall
53 state the name of the person appointed and, to the best of the
54 applicant's knowledge, all the person's connections with the
55 debtor, creditors, any other parties in interest, their respective
56 attorneys and accountants, the United States trustee, ~~and or~~
57 persons employed in the office of the United States trustee.
58 ~~Unless the person has been elected under § 1104(b), the The~~

FEDERAL RULES OF BANKRUPTCY PROCEDURE

59 application shall state the names of the parties in interest with
60 whom the United States trustee consulted regarding the
61 appointment. The application shall be accompanied by a
62 verified statement of the person appointed setting forth the
63 person's connections with the debtor, creditors, any other
64 party in interest, their respective attorneys and accountants,
65 the United States trustee, ~~and~~ or any person employed in the
66 office of the United States trustee.

COMMITTEE NOTE

Under § 1104(b)(2) of the Code, as amended in 2005, if an eligible, disinterested person is elected to serve as trustee in a chapter 11 case, the United States trustee is directed to file a report certifying the election. The person elected does not have to be appointed to the position. Rather, the filing of the report certifying the election itself constitutes the appointment. The section further provides that in the event of a dispute in the election of a trustee, the court must resolve the matter. The rule is amended to be consistent with § 1104(b)(2).

When the United States trustee files a report certifying the election of a trustee, the person elected must provide a verified statement, similar to the statement required of professional persons under Rule 2014, disclosing connections with parties in interest and certain other persons connected with the case. Although court

FEDERAL RULES OF BANKRUPTCY PROCEDURE

approval of the person elected is not required, the disclosure of the person's connections will enable parties in interest to determine whether the person is disinterested.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

**Rule 2007.2. Appointment of Patient Care Ombudsman
in a Health Care Business Case**

1 (a) ORDER TO APPOINT PATIENT CARE
2 OMBUDSMAN. In a chapter 7, chapter 9, or chapter 11 case
3 in which the debtor is a health care business, the court shall
4 order the appointment of a patient care ombudsman under
5 § 333 of the Code, unless the court, on motion of the United
6 States trustee or a party in interest filed no later than 20 days
7 after the commencement of the case or within another time
8 fixed by the court, finds that the appointment of a patient care
9 ombudsman is not necessary under the specific circumstances
10 of the case for the protection of patients.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

11 (b) MOTION FOR ORDER TO APPOINT
12 OMBUDSMAN. If the court has found that the appointment
13 of an ombudsman is not necessary, or has terminated the
14 appointment, the court, on motion of the United States trustee
15 or a party in interest, may order the appointment at a later
16 time if it finds that the appointment has become necessary to
17 protect patients.

18 (c) NOTICE OF APPOINTMENT. If a patient care
19 ombudsman is appointed under § 333, the United States
20 trustee shall promptly file a notice of the appointment,
21 including the name and address of the person appointed.
22 Unless the person appointed is a State Long-Term Care
23 Ombudsman, the notice shall be accompanied by a verified
24 statement of the person appointed setting forth the person's
25 connections with the debtor, creditors, patients, any other
26 party in interest, their respective attorneys and accountants,

FEDERAL RULES OF BANKRUPTCY PROCEDURE

27 the United States trustee, and any person employed in the
28 office of the United States trustee.

29 (d) TERMINATION OF APPOINTMENT. On motion
30 of the United States trustee or a party in interest, the court
31 may terminate the appointment of a patient care ombudsman
32 if the court finds that the appointment is not necessary to
33 protect patients.

34 (e) MOTION. A motion under this rule shall be
35 governed by Rule 9014. The motion shall be transmitted to
36 the United States trustee and served on: the debtor; the
37 trustee; any committee elected under § 705 or appointed
38 under § 1102 of the Code or its authorized agent, or, if the
39 case is a chapter 9 municipality case or a chapter 11
40 reorganization case and no committee of unsecured creditors
41 has been appointed under § 1102, on the creditors included on

FEDERAL RULES OF BANKRUPTCY PROCEDURE

- 42 the list filed under Rule 1007(d); and such other entities as
43 the court may direct.

COMMITTEE NOTE

Section 333 of the Code, added by the 2005 amendments, requires the court to order the appointment of a health care ombudsman within the first 30 days of a health care business case, unless the court finds that the appointment is not necessary for the protection of patients. The rule recognizes this requirement and provides a procedure by which a party may obtain a court order finding that the appointment of a patient care ombudsman is unnecessary. In the absence of a timely motion under subdivision (a) of this rule, the court will enter an order directing the United States trustee to appoint the ombudsman.

Subdivision (b) recognizes that, despite a previous order finding that a patient care ombudsman is not necessary, circumstances of the case may change or newly discovered evidence may demonstrate the necessity of an ombudsman to protect the interests of patients. In that event, a party may move the court for an order directing the appointment of an ombudsman.

When the appointment of a patient care ombudsman is ordered, the United States trustee is required to appoint a disinterested person to serve in that capacity. Court approval of the appointment is not required, but subdivision (c) requires the person appointed, if not a State Long-Term Care Ombudsman, to file a verified statement similar to the statement filed by professional persons under Rule 2014 so that parties in interest will have information relevant to disinterestedness. If a party believes that the

FEDERAL RULES OF BANKRUPTCY PROCEDURE

person appointed is not disinterested, it may file a motion asking the court to find that the person is not eligible to serve.

Subdivision (d) permits parties in interest to move for the termination of the appointment of a patient care ombudsman. If the movant can show that there no longer is any need for the ombudsman, the court may order the termination of the appointment.

INTERIM RULES COMPARISON:

A stylistic change was made in subdivision (a) by reordering the words in lines 9-10. Subdivision (c) was renamed “NOTICE OF APPOINTMENT” as compared to “APPOINTMENT OF OMBUDSMAN.” Subdivision (d) changed “not necessary for the protection of patients” to “not necessary to protect patients” on lines 16-17. The list in subdivision (e) is now set out by a colon and semicolons as compared to the separation of the listed items by commas in the Interim Rule.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status

- 1 (a) TRUSTEE OR DEBTOR IN POSSESSION. A
2 trustee or debtor in possession shall:
3 (1) in a chapter 7 liquidation case and, if the court
4 directs, in a chapter 11 reorganization case file and transmit

FEDERAL RULES OF BANKRUPTCY PROCEDURE

5 to the United States trustee a complete inventory of the
6 property of the debtor within 30 days after qualifying as a
7 trustee or debtor in possession, unless such an inventory has
8 already been filed;

9 (2) keep a record of receipts and the disposition of
10 money and property received;

11 (3) file the reports and summaries required by
12 § 704(8) of the Code which shall include a statement, if
13 payments are made to employees, of the amounts of
14 deductions for all taxes required to be withheld or paid for
15 and in behalf of employees and the place where these
16 amounts are deposited;

17 (4) as soon as possible after the commencement of
18 the case, give notice of the case to every entity known to be
19 holding money or property subject to withdrawal or order of
20 the debtor, including every bank, savings or building and loan

FEDERAL RULES OF BANKRUPTCY PROCEDURE

21 association, public utility company, and landlord with whom
22 the debtor has a deposit, and to every insurance company
23 which has issued a policy having a cash surrender value
24 payable to the debtor, except that a notice need not be given
25 to any entity who has knowledge or has previously been
26 notified of the case;

27 (5) in a chapter 11 reorganization case, on or before
28 the last day of the month after each calendar quarter during
29 which there is a duty to pay fees under 28 U.S.C.
30 § 1930(a)(6), file and transmit to the United States trustee a
31 statement of any disbursements made during that quarter and
32 of any fees payable under 28 U.S.C. § 1930 (a)(6) for that
33 quarter; and

34 (6) in a chapter 11 small business case, unless the
35 court, for cause, sets another reporting interval, file and
36 transmit to the United States trustee for each calendar month

FEDERAL RULES OF BANKRUPTCY PROCEDURE

37 after the order for relief, on the appropriate Official Form, the
38 report required by § 308. If the order for relief is within the
39 first 15 days of a calendar month, a report shall be filed for
40 the portion of the month that follows the order for relief. If
41 the order for relief is after the 15th day of a calendar month,
42 the period for the remainder of the month shall be included in
43 the report for the next calendar month. Each report shall be
44 filed no later than 20 days after the last day of the calendar
45 month following the month covered by the report. The
46 obligation to file reports under this subparagraph terminates
47 on the effective date of the plan, or conversion or dismissal of
48 the case.

49 * * * * *

50 (d) FOREIGN REPRESENTATIVE. In a case in which
51 the court has granted recognition of a foreign proceeding
52 under chapter 15, the foreign representative shall file any

FEDERAL RULES OF BANKRUPTCY PROCEDURE

53 notice required under § 1518 of the Code within 15 days after
54 the date when the representative becomes aware of the
55 subsequent information.

56 ~~(d)~~ (e) TRANSMISSION OF REPORTS. In a chapter 11
57 case the court may direct that copies or summaries of annual
58 reports and copies or summaries of other reports shall be
59 mailed to the creditors, equity security holders, and indenture
60 trustees. The court may also direct the publication of
61 summaries of any such reports. A copy of every report or
62 summary mailed or published pursuant to this subdivision
63 shall be transmitted to the United States trustee.

COMMITTEE NOTE

Subparagraph (a)(6) implements § 308 of the Code, added by the 2005 amendments. That section requires small business chapter 11 debtors to file periodic financial and operating reports, and the rule sets the time for filing those reports and requires the use of an Official Form for the report. The obligation to file reports under this rule does not relieve the trustee or debtor of any other obligations to provide information or documents to the United States trustee.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The rule also is amended to fix the time for the filing of notices under § 1519, added to the Code in 2005. Former subdivision (d) is renumbered as subdivision (e).

Other changes are stylistic.

INTERIM RULES COMPARISON:

Subparagraph (a)(6) was not included in the Interim Rule. It is added to implement a provision of the 2005 Act, but that provision explicitly directed that it would not become effective until the proper rules and form were adopted under the Rules Enabling Act process. Therefore, this subdivision was not included in the Interim Rule. The remainder of the rule is unchanged from the Interim Rule.

Rule 2015.1. Patient Care Ombudsman

1 (a) REPORTS. Unless the court orders otherwise, a
2 patient care ombudsman, at least 10 days before making a
3 report under § 333(b)(2) of the Code, shall give notice that
4 the report will be made to the court. The notice shall be
5 transmitted to the United States trustee, posted conspicuously
6 at the health care facility that is the subject of the report, and
7 served on: the debtor; the trustee; all patients; and any

FEDERAL RULES OF BANKRUPTCY PROCEDURE

8 committee elected under § 705 or appointed under § 1102 of
9 the Code or its authorized agent, or, if the case is a chapter 9
10 municipality case or a chapter 11 reorganization case and no
11 committee of unsecured creditors has been appointed under
12 § 1102, on the creditors included on the list filed under Rule
13 1007(d); and such other entities as the court may direct. The
14 notice shall state the date and time when the report will be
15 made, the manner in which the report will be made, and, if the
16 report is in writing, the name, address, telephone number,
17 email address, and website, if any, of the person from whom
18 a copy of the report may be obtained at the debtor's expense.

19 (b) AUTHORIZATION TO REVIEW CONFIDENTIAL
20 PATIENT RECORDS. A motion by a health care
21 ombudsman under § 333(c) to review confidential patient
22 records shall be governed by Rule 9014, served on the patient
23 and any family member or other contact person whose name

FEDERAL RULES OF BANKRUPTCY PROCEDURE

24 and address has been given to the trustee or the debtor for the
25 purpose of providing information regarding the patient's
26 health care, and transmitted to the United States trustee
27 subject to applicable nonbankruptcy law relating to patient
28 privacy. Unless the court orders otherwise, a hearing on the
29 motion may not be commenced earlier than 15 days after
30 service of the motion.

COMMITTEE NOTE

This rule is new and implements § 333 of the Code, added by the 2005 amendments. Subdivision (a) is designed to give parties in interest, including patients or their representatives, sufficient notice so that they will be able to review written reports or attend hearings at which reports are made. The rule permits a notice to relate to a single report or to periodic reports to be given during the case. For example, the ombudsman may give notice that reports will be made at specified intervals or dates during the case.

Subdivision (a) of the rule also requires that the notice be posted conspicuously at the health care facility in a place where it will be seen by patients and their families or others visiting the patients. This may require posting in common areas and patient rooms within the facility. Because health care facilities and the patients they serve can vary greatly, the locations of the posted notice

FEDERAL RULES OF BANKRUPTCY PROCEDURE

should be tailored to the specific facility that is the subject of the report.

Subdivision (b) requires the ombudsman to notify the patient and the United States trustee that the ombudsman is seeking access to confidential patient records so that they will be able to appear and be heard on the matter. This procedure should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality. Notices given under this rule are subject to the provisions of applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

INTERIM RULES COMPARISON:

There are minor stylistic changes to this rule. In subdivision (a), the list of entities to be served is set off by a colon and semicolons rather than commas as in the Interim Rule. The last sentence of subdivision (b) is rewritten to clarify the limitation on the commencement of a hearing.

Rule 2015.2. Transfer of Patient in Health Care Business Case

- 1 Unless the court orders otherwise, if the debtor is a health
- 2 care business, the trustee may not transfer a patient to another
- 3 health care business under § 704(a)(12) of the Code unless
- 4 the trustee gives at least 10 days' notice of the transfer to the

FEDERAL RULES OF BANKRUPTCY PROCEDURE

5 patient care ombudsman, if any, the patient, and any family
6 member or other contact person whose name and address has
7 been given to the trustee or the debtor for the purpose of
8 providing information regarding the patient's health care.
9 The notice is subject to applicable nonbankruptcy law relating
10 to patient privacy.

COMMITTEE NOTE

This rule is new. Section 704(a)(12), added to the Code by the 2005 amendments, authorizes the trustee to relocate patients when a health care business debtor's facility is in the process of being closed. The Code permits the trustee to take this action without the need for any court order, but the notice required by this rule will enable a patient care ombudsman appointed under § 333, or a patient who contends that the trustee's actions violate § 704(a)(12), to have those issues resolved before the patient is transferred.

This rule also permits the court to enter an order dispensing with or altering the notice requirement in proper circumstances. For example, a facility could be closed immediately, or very quickly, such that 10 days' notice would not be possible in some instances. In that event, the court may shorten the time required for notice.

Notices given under this rule are subject to the provisions of applicable federal and state laws that relate to the protection of

FEDERAL RULES OF BANKRUPTCY PROCEDURE

patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

INTERIM RULES COMPARISON:

The rule is rewritten in lines 5-7 to clarify the identities of persons to whom notices must be sent.

Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest

1 (a) REPORTING REQUIREMENT. In a chapter 11
2 case, the trustee or debtor in possession shall file periodic
3 financial reports of the value, operations, and profitability of
4 each entity that is not a publicly traded corporation or a
5 debtor in a case under title 11, and in which the estate holds
6 a substantial or controlling interest. The reports shall be
7 prepared as prescribed by the appropriate Official Form, and
8 shall be based upon the most recent information reasonably
9 available to the trustee or debtor in possession.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

10 (b) TIME FOR FILING; SERVICE. The first report
11 required by this rule shall be filed no later than five days
12 before the first date set for the meeting of creditors under
13 § 341 of the Code. Subsequent reports shall be filed no less
14 frequently than every six months thereafter, until the effective
15 date of a plan or the case is dismissed or converted. Copies
16 of the report shall be served on the United States trustee, any
17 committee appointed under § 1102 of the Code, and any other
18 party in interest that has filed a request therefor.

19 (c) PRESUMPTION OF SUBSTANTIAL OR
20 CONTROLLING INTEREST; JUDICIAL
21 DETERMINATION. For purposes of this rule, an entity of
22 which the estate controls or owns at least a 20 percent interest
23 shall be presumed to be an entity in which the estate has a
24 substantial or controlling interest. An entity in which the
25 estate controls or owns less than a 20 percent interest shall be

FEDERAL RULES OF BANKRUPTCY PROCEDURE

26 presumed not to be an entity in which the estate has a
27 substantial or controlling interest. Upon motion, the entity,
28 any holder of an interest therein, the United States trustee, or
29 any other party in interest may seek to rebut either
30 presumption, and the court shall, after notice and a hearing,
31 determine whether the estate's interest in the entity is
32 substantial or controlling.

33 (d) MODIFICATION OF REPORTING
34 REQUIREMENT. The court may, after notice and a hearing,
35 vary the reporting requirement established by subdivision (a)
36 of this rule for cause, including that the trustee or debtor in
37 possession is not able, after a good faith effort, to comply
38 with the reporting requirement, or that the information
39 required by subdivision (a) is publicly available.

40 (e) NOTICE AND PROTECTIVE ORDERS. No later
41 than 20 days before filing the first report required by this rule,

FEDERAL RULES OF BANKRUPTCY PROCEDURE

42 the trustee or debtor in possession shall send notice to the
43 entity in which the estate has a substantial or controlling
44 interest, and to all holders – known to the trustee or debtor in
45 possession – of an interest in that entity, that the trustee or
46 debtor in possession expects to file and serve financial
47 information relating to the entity in accordance with this rule.
48 The entity in which the estate has a substantial or controlling
49 interest, or a person holding an interest in that entity, may
50 request protection of the information under § 107 of the Code.
51 (f) EFFECT OF REQUEST. Unless the court orders
52 otherwise, the pendency of a request under subdivisions (c),
53 (d), or (e) of this rule shall not alter or stay the requirements
54 of subdivision (a).

COMMITTEE NOTE

This rule implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8. Reports are to be made on the appropriate Official Form. While

FEDERAL RULES OF BANKRUPTCY PROCEDURE

24 90 days' notice by mail to the creditors of that fact and ~~that~~
25 ~~they may file~~ of the date by which proofs of claim ~~within 90~~
26 ~~days after the mailing of the notice~~ must be filed.

27 (6) If notice of the time to file a proof of claim has
28 been mailed to a creditor at a foreign address, on motion filed
29 by the creditor before or after the expiration of the time, the
30 court may extend the time by not more than 60 days if the
31 court finds that the notice was insufficient under the
32 circumstances to give the creditor a reasonable time to file a
33 proof of claim.

COMMITTEE NOTE

Subdivision (c)(1) is amended to provide additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case. This implements § 1308, added by the 2005 amendments, which requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so.

Subdivision (c)(5) of the rule is amended to set a new period for providing notice to creditors that they may file a proof of claim in

FEDERAL RULES OF BANKRUPTCY PROCEDURE

a case in which they were previously informed that there was no need to file a claim. Under Rule 2002(e), if it appears that there will be no distribution to creditors, the creditors are notified of this fact and are informed that if assets are later discovered and a distribution is likely, that a new notice will be given to the creditors. This second notice is prescribed by Rule 3002(c)(5). The rule is amended to direct the clerk to give at least 90 days' notice of the time within which creditors may file a proof of claim. Setting the deadline in this manner allows the notices being sent to creditors to be more accurate regarding the deadline than was possible under the prior rule. The rule previously began the 90 day notice period from the time of the mailing of the notice, a date that could vary and generally would not even be known to the creditor. Under the amended rule, the notice will identify a specific bar date for filing proofs of claim thereby being more helpful to the creditors.

Subdivision (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with § 1514(d), added to the Code by the 2005 amendments, and requires that the rules and orders of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

Other changes are stylistic.

INTERIM RULES COMPARISON:

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The word “insufficient” in subdivision (c)(6) was substituted for the words “not sufficient” in the Interim Rule. The change to subdivision (c)(5) was not included in the Interim Rule. It was made in response to problems identified with the prior version of the rule.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases

1

* * * * *

2

(c) FILING PROOF OF CLAIM.

3

(1) *Who May File.* Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

4

5

6

(2) *Who Must File.* Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

7

8

9

10

11

12

13

(3) *Time for Filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or

14

FEDERAL RULES OF BANKRUPTCY PROCEDURE

15 interest may be filed. Notwithstanding the expiration of such
16 time, a proof of claim may be filed to the extent and under the
17 conditions stated in Rule 3002(c)(2), (c)(3), ~~and~~ (c)(4), and
18 (c)(6).

19 (4) *Effect of Filing Claim or Interest.* A proof of
20 claim or interest executed and filed in accordance with this
21 subdivision shall supersede any scheduling of that claim or
22 interest pursuant to § 521(a)(1) of the Code.

23 (5) *Filing by Indenture Trustee.* An indenture trustee
24 may file a claim on behalf of all known or unknown holders
25 of securities issued pursuant to the trust instrument under
26 which it is trustee.

27 * * * * *

COMMITTEE NOTE

Subdivision (c)(3) is amended to implement § 1514(d) of the Code, which was added by the 2005 amendments. It makes the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. This change was necessary so that creditors with foreign addresses can be

FEDERAL RULES OF BANKRUPTCY PROCEDURE

provided such additional time as is reasonable under the circumstances to file proofs of claims.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

1
2
3
4
5
6
7
8
9
10

* * * * *

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement under § 1125 of the Code or evidence showing compliance with § 1126(b) ~~of the Code~~ shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated and Rule 3017.1 shall apply as if the plan is a disclosure statement.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

11

* * * * *

12

(d) STANDARD FORM SMALL BUSINESS

13

DISCLOSURE STATEMENT AND PLAN. In a small

14

business case, the court may approve a disclosure statement

15

and may confirm a plan that conform substantially to the

16

appropriate Official Forms or other standard forms approved

17

by the court.

COMMITTEE NOTE

Subdivision (b) is amended to recognize that, in 2005, § 1125(f)(1) was added to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1 and is subject to all other rules applicable to disclosure statements in small business cases.

Subdivision (d) is added to the rule to implement § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 which requires the promulgation of Official Forms for plans and disclosure statements in small business cases. Section 1125(f)(2) of the Code provides that the court may approve a disclosure statement submitted on the appropriate Official Form or on a standard form

FEDERAL RULES OF BANKRUPTCY PROCEDURE

approved by the court. The rule takes no position on whether a court may require a local standard form disclosure statement or plan of reorganization in lieu of the Official Forms.

Other changes are stylistic.

INTERIM RULES COMPARISON:

The only change in the Interim Rule is the addition of subdivision (d). It implements a provision of the 2005 Act that does not become effective until the applicable rules and Official Forms become effective under the Rules Enabling Act.

Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case

1 (a) **CONDITIONAL APPROVAL OF DISCLOSURE**
2 **STATEMENT. ~~If the debtor is~~ In a small business case ~~and~~**
3 ~~has made a timely election to be considered a small business~~
4 ~~in a chapter 11 case,~~ the court may, on application of the plan
5 proponent or on its own initiative, conditionally approve a
6 disclosure statement filed in accordance with Rule 3016~~(b)~~.
7 On or before conditional approval of the disclosure statement,
8 the court shall:

FEDERAL RULES OF BANKRUPTCY PROCEDURE

No change from the Interim Rule.

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

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

FEDERAL RULES OF BANKRUPTCY PROCEDURE

13 (b) MODIFICATION OF PLAN AFTER
14 CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If
15 the debtor is an individual, a request to modify the plan under
16 § 1127(e) of the Code shall identify the proponent and shall
17 be filed together with the proposed modification. The clerk,
18 or some other person as the court may direct, shall give the
19 debtor, the trustee, and all creditors not less than 20 days'
20 notice by mail of the time fixed to file objections and, if an
21 objection is filed, the hearing to consider the proposed
22 modification, unless the court orders otherwise with respect
23 to creditors who are not affected by the proposed
24 modification. A copy of the notice shall be transmitted to the
25 United States trustee, together with a copy of the proposed
26 modification. Any objection to the proposed modification
27 shall be filed and served on the debtor, the proponent of the
28 modification, the trustee, and any other entity designated by

FEDERAL RULES OF BANKRUPTCY PROCEDURE

29 the court, and shall be transmitted to the United States trustee.
30 An objection to a proposed modification is governed by Rule
31 9014.

COMMITTEE NOTE

Section 1127 of the Code, amended by the 2005 amendments, provides for modification of a confirmed plan in a chapter 11 case of an individual debtor. The rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.

INTERIM RULES COMPARISON:

Headings were inserted for the subdivisions of the rule, but no other changes were made from the Interim Rule.

Rule 4002. Duties of Debtor

1 (a) IN GENERAL. In addition to performing other duties
2 prescribed by the Code and rules, the debtor shall:
3 (1) attend and submit to an examination at the times
4 ordered by the court;

FEDERAL RULES OF BANKRUPTCY PROCEDURE

5 (2) attend the hearing on a complaint objecting to
6 discharge and testify, if called as a witness;

7 (3) inform the trustee immediately in writing as to the
8 location of real property in which the debtor has an interest
9 and the name and address of every person holding money or
10 property subject to the debtor's withdrawal or order if a
11 schedule of property has not yet been filed pursuant to Rule
12 1007;

13 (4) cooperate with the trustee in the preparation of an
14 inventory, the examination of proofs of claim, and the
15 administration of the estate; and

16 (5) file a statement of any change of the debtor's
17 address.

18 (b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE
19 DOCUMENTATION.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

20 (1) Personal Identification. Every individual debtor
21 shall bring to the meeting of creditors under § 341:

22 (A) a picture identification issued by a
23 governmental unit, or other personal identifying information
24 that establishes the debtor's identity; and

25 (B) evidence of social-security number(s), or a
26 written statement that such documentation does not exist.

27 (2) Financial Information. Every individual debtor
28 shall bring to the meeting of creditors under § 341, and make
29 available to the trustee, the following documents or copies of
30 them, or provide a written statement that the documentation
31 does not exist or is not in the debtor's possession:

32 (A) evidence of current income such as the most
33 recent payment advice;

34 (B) unless the trustee or the United States trustee
35 instructs otherwise, statements for each of the debtor's

FEDERAL RULES OF BANKRUPTCY PROCEDURE

36 depository and investment accounts, including checking,
37 savings, and money market accounts, mutual funds and
38 brokerage accounts for the time period that includes the date
39 of the filing of the petition; and

40 (C) documentation of monthly expenses claimed
41 by the debtor if required by § 707(b)(2)(A) or (B).

42 (3) Tax Return. At least 7 days before the first date
43 set for the meeting of creditors under § 341, the debtor shall
44 provide to the trustee a copy of the debtor's federal income
45 tax return for the most recent tax year ending immediately
46 before the commencement of the case and for which a return
47 was filed, including any attachments, or a transcript of the tax
48 return, or provide a written statement that the documentation
49 does not exist.

50 (4) Tax Returns Provided to Creditors. If a creditor,
51 at least 15 days before the first date set for the meeting of

FEDERAL RULES OF BANKRUPTCY PROCEDURE

52 creditors under § 341, requests a copy of the debtor's tax
53 return that is to be provided to the trustee under subdivision
54 (b)(3), the debtor, at least 7 days before the first date set for
55 the meeting of creditors under § 341, shall provide to the
56 requesting creditor a copy of the return, including any
57 attachments, or a transcript of the tax return, or provide a
58 written statement that the documentation does not exist.

59 (5) Confidentiality of Tax Information. The debtor's
60 obligation to provide tax returns under Rule 4002(b)(3) and
61 (b)(4) is subject to procedures for safeguarding the
62 confidentiality of tax information established by the Director
63 of the Administrative Office of the United States Courts.

COMMITTEE NOTE

This rule is amended to implement § 521(a)(1)(B)(iv) and (e)(2), added to the Code by the 2005 amendments. These Code amendments expressly require the debtor to file with the court, or provide to the trustee, specific documents. The amendments to the rule implement these obligations and establish a time frame for creditors to make requests for a copy of the debtor's federal income

FEDERAL RULES OF BANKRUPTCY PROCEDURE

tax return. The rule also requires the debtor to provide documentation in support of claimed expenses under § 707(b)(2)(A) and (B).

Subdivision (b) is also amended to require the debtor to cooperate with the trustee by providing materials and documents necessary to assist the trustee in the performance of the trustee's duties. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521, or to limit the access of the Attorney General to any information provided by the debtor in the case. The rule does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the § 341 meeting of creditors the documents which the debtor possesses. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials provided to the trustee would not be made available to any other party in interest at the § 341 meeting of creditors other than the Attorney General. Some of the documents may contain otherwise private information that should not be disseminated. For example, pay stubs and financial-account statements might include the social-security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. The debtor should redact all but the last four digits of all social-security numbers and the names of any minors when they appear in these documents. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Tax information produced under this rule is subject to procedures for safeguarding confidentiality established by the Director of the Administrative Office of the United States Courts.

INTERIM RULES COMPARISON:

There are several minor changes to the rule. The word “if” is substituted for “when” and “Federal” becomes “federal.” The language of the rule is reordered to improve its clarity.

Rule 4003. Exemptions

1

* * * * *

2

(b) OBJECTING TO A CLAIM OF EXEMPTIONS.

3

(1) Except as provided in paragraphs (2) and (3), a ~~A~~

4

party in interest may file an objection to the list of property

5

claimed as exempt ~~only~~ within ~~30~~ 60 days after the meeting

6

of creditors held under § 341(a) is concluded or within 30

7

days after any amendment to the list or supplemental

8

schedules is filed, whichever is later. The court may, for

9

cause, extend the time for filing objections if, before the time

FEDERAL RULES OF BANKRUPTCY PROCEDURE

10 to object expires, a party in interest files a request for an
11 extension.

12 (2) The trustee may file an objection to a claim of
13 exemption at any time prior to one year after the closing of
14 the case if the debtor fraudulently asserted the claim of
15 exemption. The trustee shall deliver or mail the objection to
16 the person filing the list and the person's attorney. _

17 (3) An objection to a claim of exemption based on
18 § 522(q) shall be filed before the closing of the case. If an
19 exemption is first claimed after a case is reopened, an
20 objection shall be filed before the reopened case is closed.

21 (4) Copies A copy of the any objection objections
22 shall be delivered or mailed to the trustee, the person filing
23 the list, and the person's attorney for that person.

24

* * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

25 (d) AVOIDANCE BY DEBTOR OF TRANSFERS OF
26 EXEMPT PROPERTY. A proceeding by the debtor to avoid
27 a lien or other transfer of property exempt under § 522(f) of
28 the Code shall be by motion in accordance with Rule 9014.
29 Notwithstanding the provisions of subdivision (b), a creditor
30 may object to a motion filed under § 522(f) by challenging
31 the validity of the exemption asserted to be impaired by the
32 lien.

COMMITTEE NOTE

Subdivision (b) is rewritten to include four subparagraphs.

Subdivision (b)(1) is amended to extend the deadline for objections to exemptions from 30 days to 60 days after the conclusion of the meeting of creditors held under § 341(a). The deadline for objecting to exemptions is short, and the Supreme Court has held that the deadline is relatively inelastic. Taylor v. Freland & Kronz, 503 U.S. 638 (1992). As a result of the amendment to § 522(a)(3) of the Code in 2005, the trustee and creditors may need more time to evaluate the exemptions claimed by the debtor and, in particular, whether the debtor's claimed exemption is based on the law of the appropriate jurisdiction.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Subdivision (b)(2) is added to the rule to permit the trustee to object to an exemption at any time up to one year after the closing of the case if the debtor fraudulently claimed the exemption. Extending the deadline for trustees to object to an exemption when the exemption claim has been fraudulently made will permit the court to review and, in proper circumstances, deny improperly claimed exemptions, thereby protecting the legitimate interests of creditors and the bankruptcy estate. However, similar to the deadline set in §727(e) for revoking a discharge which was fraudulently obtained, an objection to an exemption that was fraudulently claimed must be filed within one year after the closing of the case. Subdivision (b)(2) extends the objection deadline only for trustees.

Subdivision (b)(3) is added to the rule to reflect the addition of subsection (q) to § 522 of the Code by the 2005 Act. Section 522(q) imposes a \$125,000 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider issues relating to § 522 late in the case, and the 60-day period for objections would not be appropriate for this provision.

Subdivision (d) is amended to clarify that a creditor with a lien on property that the debtor is attempting to avoid on the grounds that the lien impairs an exemption may raise in defense to the lien avoidance action any objection to the debtor's claimed exemption. The right to object is limited to an objection to the exemption of the property subject to the lien and for purposes of the lien avoidance action only. The creditor may not object to other exemption claims made by the debtor. Those objections, if any, are governed by Rule 4003(b).

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Other changes are stylistic.

INTERIM RULES COMPARISON:

The general deadline for filing objections to exemptions is extended from 30 to 60 days after the first date set for the § 341 meeting of creditors. A new subdivision (b)(2) is added to the rule, and subdivisions (b)(2) and (b)(3) of the Interim Rule are redesignated as (b)(3) and (b)(4), respectively. Subdivision (d) is amended to address an issue that existed under the Code even prior to the enactment of the 2005 Act.

Rule 4004. Grant or Denial of Discharge

1

* * * * *

2

(c) GRANT OF DISCHARGE.

3

(1) In a chapter 7 case, on expiration of the time fixed

4

for filing a complaint objecting to discharge and the time

5

fixed for filing a motion to dismiss the case under Rule

6

1017(e), the court shall forthwith grant the discharge unless:

7

(A) the debtor is not an individual; ;

8

(B) a complaint objecting to the discharge has

9

been filed; ;

FEDERAL RULES OF BANKRUPTCY PROCEDURE

10 (C) the debtor has filed a waiver under
11 § 707(a)(10); ;

12 (D) a motion to dismiss the case under § 707 is
13 pending; ;

14 (E) a motion to extend the time for filing a
15 complaint objecting to the discharge is pending; ;

16 (F) a motion to extend the time for filing a motion
17 to dismiss the case under Rule 1017(e) is pending; ~~or~~ ;

18 (G) the debtor has not paid in full the filing fee
19 prescribed by 28 U.S.C. § 1930(a) and any other fee
20 prescribed by the Judicial Conference of the United States
21 under 28 U.S.C. § 1930(b) that is payable to the clerk upon
22 the commencement of a case under the Code, unless the court
23 has waived the fees under 28 U.S.C. § 1930(f);

FEDERAL RULES OF BANKRUPTCY PROCEDURE

24 (H) the debtor has not filed with the court a
25 statement of completion of a course concerning personal
26 financial management as required by Rule 1007(b)(7);

27 (I) a motion to delay or postpone discharge under
28 § 727(a)(12) is pending;

29 (J) a motion to enlarge the time to file a
30 reaffirmation agreement under Rule 4008(a) is pending;

31 (K) a presumption has arisen under § 524(m) that
32 a reaffirmation agreement is an undue hardship; or

33 (L) a motion is pending to delay discharge because
34 the debtor has not filed with the court all tax documents
35 required to be filed under § 521(f).

36 * * * * *

37 (3) If the debtor is required to file a statement under
38 Rule 1007(b)(8), the court shall not grant a discharge earlier
39 than 30 days after the statement is filed.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

40

* * * * *

COMMITTEE NOTE

Subdivision (c)(1)(G) is amended to reflect the fee waiver provision in 28 U.S.C. § 1930, added by the 2005 amendments.

Subdivision (c)(1)(H) is new. It reflects the 2005 addition to the Code of §§ 727(a)(11) and 1328(g), which require that individual debtors complete a course in personal financial management as a condition to the entry of a discharge. Including this requirement in the rule helps prevent the inadvertent entry of a discharge when the debtor has not complied with this requirement. If a debtor fails to file the required statement regarding a personal financial management course, the clerk will close the bankruptcy case without the entry of a discharge.

Subdivision (c)(1)(I) is new. It reflects the 2005 addition to the Code of § 727(a)(12). This provision is linked to § 522(q). Section 522(q) limits the availability of the homestead exemption for individuals who have been convicted of a felony or who owe a debt arising from certain causes of action within a particular time frame. The existence of reasonable cause to believe that § 522(q) may be applicable to the debtor constitutes grounds for withholding the discharge.

Subdivision (c)(1)(J) is new. It accommodates the deadline for filing a reaffirmation agreement established by Rule 4008(a).

Subdivision (c)(1)(K) is new. It reflects the 2005 revisions to § 524 of the Code that alter the requirements for approval of reaffirmation agreements. Section 524(m) sets forth circumstances under which a reaffirmation agreement is presumed to be an undue

FEDERAL RULES OF BANKRUPTCY PROCEDURE

hardship. This triggers an obligation to review the presumption and may require notice and a hearing. Subdivision (c)(1)(J) has been added to prevent the discharge from being entered until the court approves or disapproves the reaffirmation agreement in accordance with § 524(m).

Subdivision (c)(1)(L) is new. It implements § 1228(a) of Public Law Number 109-8, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which prohibits entry of a discharge unless required tax documents have been provided to the court.

Subdivision (c)(3) is new. It postpones the entry of the discharge of an individual debtor in a case under chapter 11, 12, or 13 if there is a question as to the applicability of § 522(q) of the Code. The postponement provides an opportunity for a creditor to file a motion to limit the debtor's exemption under that provision.

Other changes are stylistic.

INTERIM RULES COMPARISON:

In subdivision (c)(1)(H), the word “concerning” is substituted for the word “in.” The order of the wording in subparagraphs (K) and (L) is changed to improve clarity.

Rule 4006. Notice of No Discharge

FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 If an order is entered; denying a discharge; ~~or~~ revoking a
2 discharge; ~~or~~ if approving a waiver of discharge; ~~is filed or,~~
3 in the case of an individual debtor, closing the case without
4 the entry of a discharge, the clerk, ~~after the order becomes~~
5 ~~final or the waiver is filed~~ shall promptly ~~give notice thereof~~
6 to notify all ~~creditors~~ parties in interest in the manner
7 provided ~~in~~ by Rule 2002.

COMMITTEE NOTE

This amendment was necessary because the 2005 amendments to the Code require that individual debtors in a chapter 7 or 13 case complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, the case may be closed and no discharge will be entered. Reopening the case is governed by § 350 and Rule 5010. The rule is amended to provide notice to parties in interest, including the debtor, that no discharge was entered.

INTERIM RULES COMPARISON:

Several minor stylistic changes were made from the Interim Rule. The initial list in the rule is revised slightly to make it consistent, and “give notice thereof” is changed to “notify” on lines 6-7.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 4007. Determination of Dischargeability of a Debt

1
2
3
4
5
6
7
8
9
10
11
12
13
14

* * * * *

(c) TIME FOR FILING COMPLAINT UNDER § 523(c)
IN A CHAPTER 7 LIQUIDATION, CHAPTER 11
REORGANIZATION, ~~OR~~ CHAPTER 12 FAMILY
FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER
13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE
OF TIME FIXED. Except as otherwise provided in
subdivision (d), a ~~A~~ complaint to determine the
dischargeability of a debt under § 523(c) shall be filed no
later than 60 days after the first date set for the meeting of
creditors under § 341(a). The court shall give all creditors no
less than 30 days' notice of the time so fixed in the manner
provided in Rule 2002. On motion of a party in interest, after
hearing on notice, the court may for cause extend the time

FEDERAL RULES OF BANKRUPTCY PROCEDURE

15 fixed under this subdivision. The motion shall be filed before
16 the time has expired.

17 (d) TIME FOR FILING COMPLAINT UNDER § ~~523(c)~~
18 523(a)(6) IN CHAPTER 13 INDIVIDUAL'S DEBT
19 ADJUSTMENT CASE; NOTICE OF TIME FIXED. On
20 motion by a debtor for a discharge under § 1328(b), the court
21 shall enter an order fixing the time to file a complaint to
22 determine the dischargeability of any debt under § ~~523(c)~~
23 523(a)(6) and shall give no less than 30 days' notice of the
24 time fixed to all creditors in the manner provided in Rule
25 2002. On motion of any party in interest after hearing on
26 notice the court may for cause extend the time fixed under
27 this subdivision. The motion shall be filed before the time
28 has expired.

29

* * * * *

COMMITTEE NOTE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Subdivision (c) is amended because of the 2005 amendments to § 1328(a) of the Code. This revision expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c).

The amendment to subdivision (d) reflects the 2005 amendments to § 1328(a) that expands the exceptions to discharge upon completion of a chapter 13 plan, including two out of three of the provisions that fall within § 523(c). However, the 2005 revisions to § 1328(a) do not include a reference to § 523(a)(6), which is the third provision to which § 523(c) refers. Thus, subdivision (d) is now limited to that provision.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Rule 4008. Discharge and Reaffirmation Hearing Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement

- 1 (a) FILING OF REAFFIRMATION AGREEMENT. A
2 reaffirmation agreement shall be filed no later than 60 days
3 after the first date set for the meeting of creditors under
4 § 341(a) of the Code. The court may, at any time and in its

FEDERAL RULES OF BANKRUPTCY PROCEDURE

5 discretion, enlarge the time to file a reaffirmation agreement.
6 ~~Not more than 30 days following the entry of an order~~
7 ~~granting or denying a discharge, or confirming a plan in a~~
8 ~~chapter 11 reorganization case concerning an individual~~
9 ~~debtor and on not less than 10 days notice to the debtor and~~
10 ~~the trustee, the court may hold a hearing as provided in~~
11 ~~§ 524(d) of the Code. A motion by the debtor for approval of~~
12 ~~a reaffirmation agreement shall be filed before or at the~~
13 ~~hearing.~~

14 (b) STATEMENT IN SUPPORT OF REAFFIRMATION
15 AGREEMENT. The debtor's statement required under
16 § 524(k)(6)(A) shall be accompanied by a statement of the
17 total income and expenses stated on schedules I and J. If
18 there is a difference between the total income and expenses
19 stated on those schedules and the statement required under

FEDERAL RULES OF BANKRUPTCY PROCEDURE

- 20 § 524(k)(6)(A), the statement required by this subdivision
21 shall include an explanation of the difference.

COMMITTEE NOTE

This rule is amended to establish a deadline for filing reaffirmation agreements. The Code sets out a number of prerequisites to the enforceability of reaffirmation agreements. Among those requirements, § 524(k)(6)(A) provides that each reaffirmation agreement must be accompanied by a statement indicating the debtor's ability to make the payments called for by the agreement. In the event that this statement reflects an insufficient income to allow payment of the reaffirmed debt, § 524(m) provides that a presumption of undue hardship arises, allowing the court to disapprove the reaffirmation agreement, but only after a hearing conducted prior to the entry of discharge. Rule 4004(c)(1)(K) accommodates this provision by delaying the entry of discharge where a presumption of undue hardship arises. However, in order for that rule to be effective, the reaffirmation agreement itself must be filed before the entry of discharge. Under Rule 4004(c)(1) discharge is to be entered promptly after the expiration of the time for filing a complaint objecting to discharge, which, under Rule 4004(a), is 60 days after the first date set for the meeting of creditors under § 341(a). Accordingly, that date is set as the deadline for filing a reaffirmation agreement.

Any party may file the agreement with the court. Thus, whichever party has a greater incentive to enforce the agreement usually will file it. In the event that the parties are unable to file a reaffirmation agreement in a timely fashion, the rule grants the court broad discretion to permit a late filing. A corresponding change to

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 4004(c)(1)(J) accommodates such an extension by providing for a delay in the entry of discharge during the pendency of a motion to extend the time for filing a reaffirmation agreement.

Rule 4008 is also amended by deleting provisions regarding the timing of any reaffirmation and discharge hearing. As noted above, § 524(m) itself requires that hearings on undue hardship be conducted prior to the entry of discharge. In other respects, including hearings to approve reaffirmation agreements of unrepresented debtors under § 524(c)(6), the rule leaves discretion to the court to set the hearing at a time appropriate for the particular circumstances presented in the case and consistent with the scheduling needs of the parties.

INTERIM RULES COMPARISON:

The Interim Rule is rewritten to change the deadline for filing a reaffirmation agreement from “30 days following the entry of a discharge” to “60 days after the first date set for the § 341 meeting of creditors.” The new deadline permits the court to hold a timely hearing on the enforceability of reaffirmation agreements when the debtor’s income appears insufficient to meet the reaffirmation obligation.

Rule 5001. Courts and Clerks’ Offices

1

* * * * *

2

(b) TRIALS AND HEARINGS; ORDERS IN

3

CHAMBERS. All trials and hearings shall be conducted in

FEDERAL RULES OF BANKRUPTCY PROCEDURE

4 open court and so far as convenient in a regular court room.
5 Except as otherwise provided in 28 U.S.C. § 152(c), all ~~AH~~
6 other acts or proceedings may be done or conducted by a
7 judge in chambers and at any place either within or without
8 the district; but no hearing, other than one ex parte, shall be
9 conducted outside the district without the consent of all
10 parties affected thereby.

COMMITTEE NOTE

The rule is amended to permit bankruptcy judges to hold hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the 2005 amendment to 28 U.S.C. § 152(c). Under that provision, bankruptcy judges may hold court outside of their districts in emergency situations and when the business of the court otherwise so requires. This amendment to the rule is intended to implement the legislation.

INTERIM RULES COMPARISON:

This rule was not included in the Interim Rules.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

16 mailing addresses designated under this subdivision, but the
17 clerk is not required to include in the register more than one
18 mailing address for each department, agency, or
19 instrumentality of the United States or the state or territory.
20 If more than one address for a department, agency, or
21 instrumentality is included in the register, the clerk shall also
22 include information that would enable a user of the register to
23 determine the circumstances when each address is applicable,
24 and mailing notice to only one applicable address is sufficient
25 to provide effective notice. The clerk shall update the register
26 annually, effective January 2 of each year. The mailing
27 address in the register is conclusively presumed to be a proper
28 address for the governmental unit, but the failure to use that
29 mailing address does not invalidate any notice that is
30 otherwise effective under applicable law.

31 * * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

COMMITTEE NOTE

The rule is amended to implement § 505(b)(1) of the Code, added by the 2005 amendments, which allows taxing authorities to designate addresses to use for the service of a request under that subsection.

INTERIM RULES COMPARISON:

In line 8, “responsible for collecting taxes” is substituted for “responsible for the collection of taxes” in the Interim Rule.

Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors

1 If a presumption of abuse has arisen under § 707(b) in a
2 chapter 7 case of an individual with primarily consumer
3 debts, the clerk shall within 10 days after the date of the filing
4 of the petition notify creditors of the presumption of abuse in
5 accordance with Rule 2002. If the debtor has not filed a
6 statement indicating whether a presumption of abuse has
7 arisen, the clerk shall within 10 days after the date of the
8 filing of the petition notify creditors that the debtor has not

FEDERAL RULES OF BANKRUPTCY PROCEDURE

9 filed the statement and that further notice will be given if a
10 later filed statement indicates that a presumption of abuse has
11 arisen. If a debtor later files a statement indicating that a
12 presumption of abuse has arisen, the clerk shall notify
13 creditors of the presumption of abuse as promptly as
14 practicable.

COMMITTEE NOTE

This rule is new. The 2005 amendments to § 342 of the Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, the rule requires that the clerk send a second notice.

INTERIM RULES COMPARISON:

The order of the wording in the first sentence of the rule is changed to emphasize that the subdivision applies when a specific presumption arises. The words "shall notify" are substituted for "shall give notice to."

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 5012. Communication and Cooperation With Foreign Courts and Foreign Representatives

1 Except for a communication concerning scheduling or
2 administration, the court in a case commenced by a foreign
3 representative shall give at least 20 days' notice of its intent
4 to communicate with a foreign court or a foreign
5 representative. The notice shall identify the subject of the
6 anticipated communication and shall be given in the manner
7 provided by Rule 2002(q). Any entity that wishes to
8 participate in the communication shall notify the court of its
9 intention no later than 5 days before the scheduled
10 communication.

COMMITTEE NOTE

This rule is new. It implements § 1525 which was added to the Code by the 2005 amendments. The rule provides an opportunity for parties in the case to take appropriate action prior to the communication between courts, or between the court and a foreign

FEDERAL RULES OF BANKRUPTCY PROCEDURE

7 States trustee to appoint a consumer privacy ombudsman
8 under § 332. Rule 9014 governs the motion which shall
9 be served on: any committee elected under § 705 or
10 appointed under § 1102 of the Code, or if the case is a
11 chapter 11 reorganization case and no committee of
12 unsecured creditors has been appointed under § 1102, on
13 the creditors included on the list of creditors filed under
14 Rule 1007(d); and on such other entities as the court may
15 direct. The motion shall be transmitted to the United
16 States trustee.

17 (2) Appointment. If a consumer privacy ombudsman
18 is appointed under § 332, no later than 5 days before the
19 hearing on the motion under § 363(b)(1)(B), the United States
20 trustee shall file a notice of the appointment, including the
21 name and address of the person appointed. The United States
22 trustee's notice shall be accompanied by a verified statement

FEDERAL RULES OF BANKRUPTCY PROCEDURE

23 of the person appointed setting forth the person's connections
24 with the debtor, creditors, any other party in interest, their
25 respective attorneys and accountants, the United States
26 trustee, or any person employed in the office of the United
27 States trustee.

28 ~~(g)~~(h) STAY OF ORDER AUTHORIZING USE, SALE,
29 OR LEASE OF PROPERTY. An order authorizing the use,
30 sale, or lease of property other than cash collateral is stayed
31 until the expiration of 10 days after entry of the order, unless
32 the court orders otherwise.

COMMITTEE NOTE

This rule is amended by inserting a new subdivision (g) to implement §§ 332 and 363(b)(1)(B) of the Code, added by the 2005 amendments. Former subdivision (g) is redesignated as subdivision (h).

INTERIM RULES COMPARISON:

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The second sentence of subdivision (g)(1) is rewritten in the active voice, and the list is set off by a colon and semicolons rather than by commas as in the Interim Rule.

Rule 6011. Disposal of Patient Records in Health Care Business Case

- 1 (a) NOTICE BY PUBLICATION UNDER § 351(1)(A).
2 A notice regarding the claiming or disposing of patient
3 records under § 351(1)(A) shall not identify any patient by
4 name or other identifying information, but shall:
5 (1) identify with particularity the health care facility
6 whose patient records the trustee proposes to destroy;
7 (2) state the name, address, telephone number, email
8 address, and website, if any, of a person from whom
9 information about the patient records may be obtained;
10 (3) state how to claim the patient records; and

FEDERAL RULES OF BANKRUPTCY PROCEDURE

11 (4) state the date by which patient records must be
12 claimed, and that if they are not so claimed the records will
13 be destroyed.

14 (b) NOTICE BY MAIL UNDER § 351(1)(B). Subject to
15 applicable nonbankruptcy law relating to patient privacy, a
16 notice regarding the claiming or disposing of patient records
17 under § 351(1) (B) shall, in addition to including the
18 information in subdivision (a), direct that a patient's family
19 member or other representative who receives the notice
20 inform the patient of the notice. Any notice under this
21 subdivision shall be mailed to the patient and any family
22 member or other contact person whose name and address has
23 been given to the trustee or the debtor for the purpose of
24 providing information regarding the patient's health care, and
25 to any insurance company known to have provided health
26 care insurance to the patient.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

27 (c) PROOF OF COMPLIANCE WITH NOTICE
28 REQUIREMENT. Unless the court orders the trustee to file
29 proof of compliance with § 351(1)(B) under seal, the trustee
30 shall not file, but shall maintain, the proof of compliance for
31 a reasonable time.

32 (d) REPORT OF DESTRUCTION OF RECORDS. The
33 trustee shall file, no later than 30 days after the destruction of
34 patient records under § 351(3), a report certifying that the
35 unclaimed records have been destroyed and explaining the
36 method used to effect the destruction. The report shall not
37 identify any patient by name or other identifying information.

COMMITTEE NOTE

This rule is new. It implements § 351(1), which was added to the Code by the 2005 amendments. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The Code provision also requires that individualized notice be sent to each patient and to the patient's family member or other contact person.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The variety of health care businesses and the range of current and former patients present the need for flexibility in the creation and publication of the notices that will be given. Nevertheless, there are some matters that must be included in any notice being given to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (a) of this rule lists the minimum requirements for notices given under § 351(1)(A), and subdivision (b) governs the form of notices under § 351(1)(B). Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Subdivision (c) directs the trustee to maintain proof of compliance with § 351(1)(B), but because the proof of compliance may contain patient names that should or must remain confidential, it prohibits filing the proof of compliance unless the court orders the trustee to file it under seal.

Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. However, because the report will be filed with the court and ordinarily will be available to the public under § 107, the names, addresses, and other identifying information of patients are not to be included in the report to protect patient privacy.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

INTERIM RULES COMPARISON:

In lines 4 and 45 of the rule, “patients” is changed to the singular, “any patient.” Subdivision (a)(2) of the Interim Rule was broken into two parts, (a)(2) and (a)(3), and former (a)(3) is redesignated as (a)(4).

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals

1

* * * * *

2

(e) ELECTION TO HAVE APPEAL HEARD BY

3

DISTRICT COURT INSTEAD OF BANKRUPTCY

4

APPELLATE PANEL; WITHDRAWAL OF ELECTION.

5

(1) Separate Writing for Election. An election to

6

have an appeal heard by the district court under 28 U.S.C.

7

§ 158(c)(1) may be made only by a statement of election

8

contained in a separate writing filed within the time

9

prescribed by 28 U.S.C. § 158(c)(1).

10

(2) Withdrawal of Election. A request to withdraw

11

the election may be filed only by written stipulation of all the

12

parties to the appeal or their attorneys of record. Upon such

13

a stipulation, the district court may either transfer the appeal

14

to the bankruptcy appellate panel or retain the appeal in the

15

district court.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

16 (f) CERTIFICATION FOR DIRECT APPEAL TO
17 COURT OF APPEALS.

18 (1) *Timely Appeal Required.* A certification of a
19 judgment, order, or decree of a bankruptcy court to a court of
20 appeals under 28 U.S.C. § 158(d)(2) shall not be effective
21 until a timely appeal has been taken in the manner required
22 by subdivisions (a) or (b) of this rule and the notice of appeal
23 has become effective under Rule 8002.

24 (2) *Court Where Certification Made and Filed.* A
25 certification that a circumstance specified in 28 U.S.C.
26 § 158(d)(2)(A)(i)-(iii) exists shall be filed in the court in
27 which a matter is pending for purposes of 28 U.S.C.
28 § 158(d)(2) and this rule. A matter is pending in a
29 bankruptcy court until the docketing, in accordance with Rule
30 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or
31 (2), or the grant of leave to appeal under 28 U.S.C. §

FEDERAL RULES OF BANKRUPTCY PROCEDURE

32 158(a)(3). A matter is pending in a district court or
33 bankruptcy appellate panel after the docketing, in accordance
34 with Rule 8007(b), of an appeal taken under 28 U.S.C. §
35 158(a)(1) or (2), or the grant of leave to appeal under 28
36 U.S.C. § 158(a)(3).

37 (A) Certification by Court on Request or Court's
38 Own Initiative.

39 (i) Before Docketing or Grant of Leave to
40 Appeal. Only a bankruptcy court may make a certification on
41 request or on its own initiative while the matter is pending in
42 the bankruptcy court.

43 (ii) After Docketing or Grant of Leave to
44 Appeal. Only the district court or bankruptcy appellate panel
45 involved may make a certification on request of the parties or
46 on its own initiative while the matter is pending in the district
47 court or bankruptcy appellate panel.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

48 (B) Certification by All Appellants and Appellees
49 Acting Jointly. A certification by all the appellants and
50 appellees, if any, acting jointly may be made by filing the
51 appropriate Official Form with the clerk of the court in which
52 the matter is pending. The certification may be accompanied
53 by a short statement of the basis for the certification, which
54 may include the information listed in subdivision (f)(3)(C) of
55 this rule.

56 (3) Request for Certification; Filing; Service;
57 Contents.

58 (A) A request for certification shall be filed,
59 within the time specified by 28 U.S.C. § 158(d)(2), with the
60 clerk of the court in which the matter is pending.

61 (B) Notice of the filing of a request for
62 certification shall be served in the manner required for service
63 of a notice of appeal under Rule 8004.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

64 (C) A request for certification shall include the
65 following:

66 (i) the facts necessary to understand the
67 question presented;

68 (ii) the question itself;

69 (iii) the relief sought;

70 (iv) the reasons why the appeal should be
71 allowed and is authorized by statute or rule, including why a
72 circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)
73 exists; and

74 (v) an attached copy of the judgment, order,
75 or decree complained of and any related opinion or
76 memorandum.

77 (D) A party may file a response to a request for
78 certification or a cross request within 10 days after the notice
79 of the request is served, or another time fixed by the court.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

80 (E) Rule 9014 does not govern a request, cross
81 request, or any response. The matter shall be submitted
82 without oral argument unless the court otherwise directs.

83 (F) A certification of an appeal under 28 U.S.C.
84 § 158(d)(2) shall be made in a separate document served on
85 the parties.

86 (4) *Certification on Court's Own Initiative.*

87 (A) A certification of an appeal on the court's own
88 initiative under 28 U.S.C. § 158(d)(2) shall be made in a
89 separate document served on the parties in the manner
90 required for service of a notice of appeal under Rule 8004.
91 The certification shall be accompanied by an opinion or
92 memorandum that contains the information required by
93 subdivision (f)(3)(C)(i)-(iv) of this rule.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

94 (B) A party may file a supplementary short
95 statement of the basis for certification within 10 days after the
96 certification.

97 (5) *Duties of Parties After Certification.* A petition
98 for permission to appeal in accordance with F. R. App. P. 5
99 shall be filed no later than 30 days after a certification has
100 become effective as provided in subdivision (f)(1).

COMMITTEE NOTE

Subdivision (e) is amended by redesignating the subdivision as (e)(1) and adding new subdivision (e)(2). Subdivision (e)(2) explicitly recognizes the district court's authority to transfer an appeal to the bankruptcy appellate panel on two conditions: first, all of the parties to the appeal must have agreed to request the withdrawal of the election to have the district court hear the appeal; and, second, the district court must decide whether to grant the request for withdrawal. The district court has discretion either to keep the case or transfer it to the bankruptcy appellate panel, which will prevent strategic behavior by parties and avoid the wasting of judicial resources.

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon

FEDERAL RULES OF BANKRUPTCY PROCEDURE

certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative or in response to a request of a party. Certification also can be made by all of the appellants and appellees. Under subdivision (f)(1), certification is effective only when a timely appeal is commenced under subdivision (a) or (b), and a notice of appeal has been timely filed under Rule 8002. These actions will provide sufficient notice of the appeal to the circuit clerk, so the rule dispenses with the uncodified temporary procedural requirements set out in § 1233 (b)(4) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8.

The rule adopts a bright-line test for identifying the court in which a matter is pending. Under subdivision (f)(2), the bright-line chosen is the “docketing” under Rule 8007(b) of an appeal of an interlocutory order or decree under 28 U.S.C. § 158(a)(2) or a final judgment, order or decree under 28 U.S.C. § 158(a)(1), or the granting of leave to appeal any other interlocutory judgment, order or decree under 28 U.S.C. § 158(a)(3), whichever is earlier.

To ensure that parties are aware of a certification, the rule requires either that it be made on the Official Form (if being made by all of the parties to the appeal) or on a separate document (whether the certification is made on the court’s own initiative or in response to a request by a party). This is particularly important because the rule adopts the bankruptcy practice established by Rule 8001(a) and (b) of requiring a notice of appeal in every instance, including interlocutory orders, of appeals from bankruptcy court orders, judgments, and decrees. Because this requirement is satisfied by

FEDERAL RULES OF BANKRUPTCY PROCEDURE

filing the notice of appeal that takes the appeal to the district court or bankruptcy appellate panel in the first instance, the rule does not require a separate notice of appeal if a certification occurs after a district court or bankruptcy appellate panel decision.

A certification under subdivision (f)(1) does not place the appeal in the circuit court. Rather, the court of appeals must first authorize the direct appeal. Subdivision (f)(5) therefore provides that any party intending to pursue the appeal in the court of appeals must seek that permission under Rule 5 of the Federal Rules of Appellate Procedure. Subdivision (f)(5) requires that the petition for permission to appeal be filed within 30 days after an effective certification.

INTERIM RULES COMPARISON:

Subdivision (e) is amended to address a matter that is not related to the 2005 Act and was therefore not included in the Interim Rule. Subdivision (f)(5) was added to advise parties that certification of an order or decree is insufficient to have the court of appeals hear the matter. They still must seek permission from the court of appeals before the appeal will be pending in the court of appeals.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 8003. Leave to Appeal

1

* * * * *

2

(d) REQUIREMENT OF LEAVE TO APPEAL. If leave

3

to appeal is required by 28 U.S.C. § 158(a) and has not earlier

4

been granted, the authorization of a direct appeal by a court

5

of appeals under 28 U.S.C. § 158(d)(2) shall be deemed to

6

satisfy the requirement for leave to appeal.

COMMITTEE NOTE

The rule is amended to add subdivision (d) to solve the jurisdictional problem that could otherwise ensue when a district court or bankruptcy appellate panel has not granted leave to appeal under 28 U.S.C. § 158(a)(3). If the court of appeals accepts the appeal, the requirement of leave to appeal is deemed satisfied. However, if the court of appeals does not authorize a direct appeal, the question of whether to grant leave to appeal remains a matter to be resolved by the district court or the bankruptcy appellate panel.

INTERIM RULES COMPARISON:

A heading was added to subdivision (d).

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 9006. Time

1
2
3
4
5
6
7
8
9
10
11
12
13

* * * * *

(b) ENLARGEMENT.

(1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

COMMITTEE NOTE

Section 1116(3) of the Code, as amended by the 2005 amendments, places specific limits on the time for filing schedules and a statement of affairs in small business cases. The rule is amended to recognize that extensions of time for filing these documents are governed by Rule 1007(c), which is amended to recognize restrictions on expanding the time to file these documents in small business cases.

Subdivisions (b)(3) and (c)(2) are also amended to provide that enlargement or reduction of the time to file a reaffirmation agreement is governed by Rule 4008(a).

Other amendments are stylistic.

INTERIM RULES COMPARISON:

Rule 4008(a) is added to the list of subdivisions for which enlargement or reduction of time is limited under subdivisions (b)(3) and (c)(2) of this rule.

Rule 9009. Forms

- 1 Except as otherwise provided in Rule 3016(d), the ~~The~~
2 Official Forms prescribed by the Judicial Conference of the
3 United States shall be observed and used with alterations as

FEDERAL RULES OF BANKRUPTCY PROCEDURE

4 may be appropriate. Forms may be combined, and their
5 contents rearranged to permit economies in their use. The
6 Director of the Administrative Office of the United States
7 Courts may issue additional forms for use under the Code.
8 The forms shall be construed as consistent with these Rules
9 and the Code.

COMMITTEE NOTE

The rule is amended to provide that a plan proponent in a small business chapter 11 case need not use an Official Form of a plan of reorganization and disclosure statement. The use of those forms is optional, and under Rule 3016(d) the proponent may submit a plan and disclosure statement in those cases that does not conform to the Official Forms.

* * * * *

2. *Proposed Amendments to Official Forms 1, 5, 6, 9, 22A, 22C, and 23, and new Exhibit D to Official Form 1. (MATERIALS SEPARATELY ATTACHED)*

- D. Proposed Amendments to Official Forms 1, 3A, 3B, 4, 5, 6, 7, 8, 9, 10, 16A, 18, 19A, 19B, 21, 22A, 22B, 22C, 23, and 24, and New Forms Exhibit D to Form 1, 25A, 25B, 25C, and 26 Submitted for Publication

The Advisory Committee recommends that the Standing Committee approve the following proposed amendments to Official Forms 1, 3A, 3B, 4, 5, 6, 7, 8, 9, 10, 16A, 18, 19A, 19B, 21, 22A, 22B, 22C, 23, and 24, and new proposed Official Forms Exhibit D to Form 1, 25A, 25B, 25C, and 26 for publication for comment.

1. Synopsis of Proposed Amendments.

Proposed amendments to 20 Official Forms and five new Official Forms, which the Advisory Committee requests be published for comment by bench and bar in August 2006, are summarized below. The forms and committee notes follow the summary. The committee notes describe all the changes to the forms – those made when the forms were amended or created in October 2005, those proposed to be made in October 2006, and those proposed only in the version which the Advisory Committee requests be published for comment. Some of the forms which have multiple parts are treated together, under a single form number, while others are treated as separate forms. This different treatment reflects the way each form is used.

(a) Official Form 1, Voluntary Petition –

The changes to the form are related to a new 28 U.S.C. § 159 which was enacted as part of the 2005 Act. Section 159 establishes substantial new statistical reporting requirements concerning bankruptcy cases and has a delayed effective date of October 17, 2006. Most of the proposed amendments to Form 1 will assist the courts in fulfilling these new statistical reporting requirements and improve the quality of the data collected. Requests for information about the debtor have been revised and the statutory definition of “consumer debt” has been added to obtain better information about individuals who incur personal debt to finance their business enterprises. Under § 159,

statistical information about the debtor's assets and liabilities must come from the debtor's schedules; accordingly, the estimated dollar amounts and estimated number of creditors on this form have been simplified, as they now will be used primarily for case management purposes.

An important amendment appears on page 2 of the form. "Exhibit D" replaces the section of the form labeled "Certification Concerning Debt Counseling by Individual/Joint Debtor(s)." Early cases decided under the 2005 amendments to the Bankruptcy Code indicate that individual debtors may not be aware of the requirement to obtain prepetition credit counseling, of the few and very narrow exceptions to that requirement, or of the potentially dire consequences to their efforts to obtain bankruptcy relief if they fail to complete the requirement. "Exhibit D" instructs individual debtors to attach a completed Exhibit D, which is a separate, two-page document.

(b) Official Form 1, Exhibit D - Individual Debtor's Statement of Compliance with Credit Counseling Requirement -

The separate Exhibit D form contains checkboxes and information about the requirements along with instructions concerning the additional documents that are required in particular circumstances. This format is similar to that of existing Exhibits A and C to Form 1.

(c) Official Form 3A, Application to Pay Filing Fee in Installments -

This form is unchanged from the October 2005 version.

(d) Official Form 3B, Application for Waiver of the Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing Fee in Full or in Installments -

This form is unchanged from the October 2005 version.

(e) Official Form 4, List of Creditors Holding 20 Largest Unsecured Claims -

The form is amended to provide more detail than the existing cross-reference to Rule 1007(m) concerning notification to a guardian or other appropriate adult when a minor child is a creditor in a bankruptcy case.

(f) Official Form 5, Involuntary Petition -

The changes to the form will facilitate, to the extent possible in an involuntary case, the collection of the same statistical information as a voluntary case.

(g) Official Form 6, Schedules -

Proposed changes in the form to be made in October 2006 have been incorporated in the amendments to be published. In addition, the description of the information to be provided concerning social-security and other taxpayer-identification numbers has been revised in conformity with new rule 9037. The statistical changes include renaming the “Statistical Summary of Certain Liabilities” to “Statistical Summary of Certain Liabilities and Related Data,” as additional information is required to be stated there. Schedules D, E, F, I, and J also are amended to facilitate reporting of the required statistical information. Schedules I and J, on which individual debtors report their “current income and current expenditures” are amended to label the totals as “average income” and “average expenses,” to conform to the terminology used in § 159. This is a stylistic amendment only, as the instructions on the form already direct the debtor to use averages. The Declaration Concerning Debtor’s Schedules is amended in the section designated for an individual debtor’s signature to reflect the fact that an individual must complete a two-page summary.

(h) Official Form 7, Statement of Financial Affairs -

The form is amended to conform to new Rule 9037, but is otherwise unchanged.

(i) Official Form 8, Chapter 7 Individual Debtor’s Statement of Intention -

The form is unchanged from the October 2005 version.

(j) Official Form 9 - Notice of Commencement of Case, Meeting of Creditors and Deadlines -

The 2005 Act added “family fisherman” to “family farmer” as a category of debtor eligible for bankruptcy relief under chapter 12 of the Bankruptcy Code. The necessity to add “family fisherman” to Forms 9G and 9H, used to notify creditors of the filing of a case under chapter 12, was overlooked when the forms were amended in October 2005. In addition, the 2005 Act provided that the Internal Revenue Service may assert a claim in a chapter 13 case based on a debtor’s income tax return filed during the three to five years the case is pending, or well after the normal deadline for filing a proof of claim. Forms 9G, 9H, and 9I are amended to correct these initial oversights.

(k) Official Form 10 - Proof of Claim -

The 2005 Act changed the priority scheme in § 507(a) of the Code which requires conforming amendments to the form. The form also is amended to provide more accurate addresses for the transmittal of payments and notices, as well as to indicate that a particular proof of claim has been replaced. The Instructions and Definitions portions of the form have been updated to conform to the new definitions and requirements adopted by the 2005 amendments.

(l) Official Form B16A - Caption (Full) -

The form is amended to require the disclosure of all names used by the debtor in the past eight years rather than six years. The form also is amended to direct the use of only the last four digits of an individual debtor’s taxpayer-identification number.

(m) Official Form 18 - Discharge of Debtor in a Chapter 7 Case -

The form is amended to require the disclosure of all names used by the debtor in the past eight years rather than six years. The form also is amended to direct the use of only the last four digits of an individual debtor's taxpayer-identification number. The explanation portion of the form is also amended to reflect the changes to the Code governing the nondischargeability of certain obligations.

(n) Official Form 19A - Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer-

The form is amended by renaming the former certification as a "declaration" and by adding additional language mandated by the 2005 amendments to § 110 of the Code.

(o) Official Form 19B - Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer-

The form is unchanged from the October 2005 version.

(p) Official Form 21 - Statement of Social-Security Number -

The form is amended to direct debtors who do not have a social-security number to furnish a taxpayer-identification number on the form.

(q) Official Form 22A - Chapter 7 Statement of Current Monthly Income and Means-Test Calculation -

Throughout the form, stylistic changes have been made so that the language of the form more closely tracks that used in the statute. In addition, on Line 43, the phrase "in default" has been deleted, in recognition that a debtor may be required to make additional payments to a creditor even if the loan is not in default, *e.g.*, to retain collateral.

(r) Official Form 22B - Chapter 11 Statement of Current Monthly Income -

The form is unchanged from the October 2005 version.

(s) Official Form 22C - Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income -

Throughout the form, stylistic changes have been made so that the language of the form more closely tracks that used in the statute. Line 17 has been amended to require all chapter 13 debtors, including those whose income is below the applicable median, to complete Part III of the form. In addition, on Line 43, the phrase “in default” has been deleted, in recognition that a debtor may be required to make additional payments to a creditor even if the loan is not in default, *e.g.*, to retain collateral.

(t) Official Form 23 - Debtor’s Certification of Completion of Instructional Course Concerning Personal Financial Management -

The form is amended to require the debtor to state the number of the certificate of completion issued by the personal financial management instructor, provide checkboxes for the debtor to indicate any applicable exception to fulfilling the requirement to undergo instruction, and to state the deadlines for filing the certification in a chapter 7 case and a chapter 13 case. The format has been revised to resemble that used in Exhibit D to Form 1, described above.

(u) Official Form 24, Certification to Court of Appeals by All Parties -

The form is unchanged from the October 2005 version.

(v) Official Form 25A, [Name of Proponent]’s Plan of Reorganization, Dated [Insert Date] -

This form is new. It implements § 433 of the 2005 Act. Section 433 specifies that the Judicial Conference is to prescribe a form of reorganization plan for use in a small business case under chapter 11 of the Code and is to do so “within a reasonable period of time after the date of enactment” of the 2005 Act. The form is intended to be used in conjunction with the small business chapter 11 disclosure statement (proposed Official Form 25B), also required to be prescribed by § 433 of the Act. Because the form is to be used in small cases, those with less than \$2 million in assets, the Advisory Committee also drafted instructions for completing the form. Because the type of debtor and details of a proposed reorganization will be quite varied, the difficulties inherent in drafting a new and complex form, and the latitude in timing afforded by § 433, the Advisory Committee did not attempt to complete the form by October 2005. The Advisory Committee expects to receive useful commentary on the proposed form during the comment period.

- (w) Official Form 25B, [Name of Plan Proponent]’s Disclosure Statement, Dated [Insert Date] -

This form is new. It implements § 433 of the 2005 Act. Section 433 also specifies that the Judicial Conference is to prescribe a form of disclosure statement for use in a small business case under chapter 11 of the Code and is to do so “within a reasonable period of time after the date of enactment” of the 2005 Act. The form is intended to be used in conjunction with the small business chapter 11 plan of reorganization (proposed Official Form 25A). Because the type of debtor and details of its financial circumstances will be quite varied, the difficulties inherent in drafting a new and complex form, and the latitude in timing afforded by § 433, the Advisory Committee did not attempt to complete the task by October 2005. The Advisory Committee expects to receive useful commentary on the proposed form during the comment period.

- (x) Official Form 25C, Small Business Monthly Operating Report -

This form is new. It implements §§ 434 and 435 of the 2005 Act, which provide for rules and an official form to assist small business debtors in chapter 11 cases to fulfill their financial reporting responsibilities under § 308 of the Code, a provision added by the 2005 Act. Section 434 also provides that these reporting requirements will not take effect until 60 days after the effective date of an official form. Rule 2015 already requires a chapter 11 debtor that is operating a business to file reports on its operations. Currently, these debtors use forms developed locally by United States trustees and bankruptcy administrators. The proposed form directs the debtor to disclose all the information specified in § 308; it is modeled on the local forms developed by the United States trustees.

(y) Official Form 26, Periodic Report Concerning Related Entities -

This form is new. It implements § 419 of the 2005 Act, which requires every chapter 11 debtor to file periodic reports on the profitability of any entities in which the estate holds a substantial or controlling interest. The form is to be used when required under proposed new Rule 2015.3. The form was designed with input from accounting professionals and includes instructions and examples of the types of information to be provided.

2. *Proposed Amendments to Official Forms 1, 3A, 3B, 4, 5, 6, 7, 8, 9, 10, 16A, 18, 19A, 19B, 21, 22A, 22B, 22C, 23, and 24, and new proposed Official Forms Exhibit D to Form 1, 25A, 25B, 25C, and 26. (MATERIALS SEPARATELY ATTACHED)*

* * * * *