Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

APR 17 2000

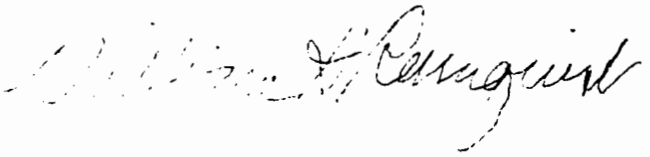
Honorable Al Gore
President, United States Senate
Washington, D.C. 20510

Dear Mr. President:

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

APR 17 2000

Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

William H. Rehnquist

SUPREME COURT OF THE UNITED STATES

APR 17 2000

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 1017, 2002(a), 4003, 4004, and 5003.

[See infra., pp. ___ ___ ___.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2000, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Bankruptcy Procedure in accordance with the provisions of Section 2075 of Title 28, United States Code.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 1017. Dismissal or Conversion of Case; Suspension

* * * * *

(e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S CHAPTER 7 CASE FOR SUBSTANTIAL ABUSE. The court may dismiss an individual debtor's case for substantial abuse under § 707(b) only on motion by the United States trustee or on the court's own motion and after a hearing on notice to the debtor, the trustee, the United States trustee, and any other entities as the court directs.

(1) A motion to dismiss a case for substantial abuse may be filed by the United States trustee only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on

request filed by the United States trustee before the time has expired, the court for cause extends the time for filing the motion to dismiss. The United States trustee shall set forth in the motion all matters to be submitted to the court for its consideration at the hearing.

* * * * *

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

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), and (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of:

* * * * *

(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000;

* * * * *

Rule 4003. Exemptions

* * * * *

(b) OBJECTING TO A CLAIM OF EXEMPTIONS. A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the

objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

* * * * *

Rule 4004. Grant or Denial of Discharge

* * * * *

(c) GRANT OF DISCHARGE.

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual,

(B) a complaint objecting to the discharge has been filed,

(C) the debtor has filed a waiver under § 727(a)(10),

(D) a motion to dismiss the case under Rule 1017(e) is pending,

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

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending, or

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

* * * * *

Rule 5003. Records Kept By the Clerk

* * * * *

(e) REGISTER OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS. The United States or the state or territory in which the court is located may file a statement designating its mailing address. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes these mailing addresses, but the clerk is not required to include in the register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information

that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

(f) OTHER BOOKS AND RECORDS OF THE CLERK. The clerk shall keep any other books and records required by the Director of the Administrative Office of the United States Courts.

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

ANTHONY J. SCIRICA
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

WILL L. GARWOOD
APPELLATE RULES

ADRIAN G. DUPLANTIER
BANKRUPTCY RULES

PAUL V. NIEMEYER
CIVIL RULES

W. EUGENE DAVIS
CRIMINAL RULES

FERN M. SMITH
EVIDENCE RULES

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

FROM: Honorable Adrian G. Duplantier, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 7, 1999

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 18-19, 1999, at the Airlie Center in Warrenton, Virginia. The Advisory Committee considered public comments regarding two packages of proposed amendments to the Bankruptcy Rules that were published in August 1998.

The first package, titled the "Litigation Package," includes proposed amendments to 27 Bankruptcy Rules that would substantially revise procedures relating to litigation (other than adversary proceedings) in bankruptcy courts. Complete revisions of Rules 9013(motions) and 9014 (contested matters) are the primary focus of the Litigation Package. The Committee received 176 letters or E-mail messages, and heard 14 witnesses testify at a public hearing in Washington, D.C., on January 28, 1999, commenting on the Litigation Package. Most of the commentators opposed the proposed amendments or suggested substantial revisions. In view of the numerous comments, the Advisory Committee decided to study further the Litigation Package. The Committee will not be presenting to the Standing Committee at its June 1999 meeting any of the proposed amendments included in the Litigation Package.

The second package of proposed amendments published in August 1998 includes miscellaneous revisions to six Bankruptcy Rules (Rules 1007, 1017, 2002(a), 2002(j), 4003, 4004, and 5003) and two Official Bankruptcy Forms (Form 1 — Voluntary Petition, and Form 7 — Statement of Financial Affairs). The Advisory Committee received 17 letters or E-mail messages commenting on these proposed amendments (no witnesses testified on these amendments at the public hearing). At its meeting at the Airlie Center, the Advisory Committee

considered these comments and decided to study further the proposed amendments to Rules 1007 and 2002(j) and Official Bankruptcy Forms 1 and 7. The Committee approved the proposed amendments to Rules 1017, 2002(a), 4003, 4004, and 5003, and will present them to the Standing Committee at its June 1999 meeting for final approval and transmission to the Judicial Conference.

* * * * *

II. Action Items

A. Proposed Amendments to Bankruptcy Rules 1017, 2002(a), 4003, 4004, and 5003 Submitted for Final Approval by the Standing Committee and Transmittal to the Judicial Conference.

1. *Public Comment.*

The Preliminary Draft of the Proposed Amendments to the Federal Rules of Bankruptcy Procedure and related committee notes were published for comment by the bench and bar in August 1998. A public hearing on the preliminary draft was held on January 28, 1999, in Washington, D.C.

Sixteen letters or E-mail messages were received and no witnesses testified regarding the proposed amendments to Bankruptcy Rules 1017, 2002(a), 4003, 4004, or 5003. The comments contained in these letters and E-mail messages are summarized on a rule-by-rule basis following the text of each rule in the GAP Report (see pages 4 - 15 below). These comments were reviewed at the Advisory Committee meeting and, as a result, several revisions were made to the published draft. The post-publication revisions are identified in the GAP Report.

2. *Synopsis of Proposed Amendments:*

(a) Rule 1017(e) is amended to permit the court to grant a timely request for an extension of time to file a motion to dismiss a chapter 7 case under § 707(b), whether the court rules on the request before or after the expiration of the 60-day time limit for filing the extension request.

(b) Rule 2002(a) is amended to avoid the expense of sending to all creditors notice of a hearing on a request for compensation or reimbursement of expenses if the request does not exceed $1,000. The current rule provides that notice is not necessary if the amount of the request does not exceed $500. The amendment also eliminates certain ambiguities in the current rule.

(c) Rule 4003(b) is amended to permit the court to grant a timely request for an extension of time to object to a list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day time limit for filing an objection. The amendments also extend the rule to apply to an objection filed by any party in interest, instead of limiting it to objections filed by a trustee or creditor.

(d) Rule 4004(c)(1) is amended to delay the granting of a discharge in a chapter 7 case while a motion for an extension of time to file a motion to dismiss the case under § 707(b) is pending.

(e) Rule 5003 is amended to permit the United States and the state in which the court is located to file statements designating safe harbor mailing addresses for notice purposes. The amendment requires the clerk to maintain a register of these addresses. Failure to use a mailing address in the register does not invalidate any notice that is otherwise effective under applicable law.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1017. Dismissal or Conversion of Case; Suspension

1 * * * * *

2 (e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S
3 CHAPTER 7 CASE FOR SUBSTANTIAL ABUSE. The
4 court may dismiss an individual debtor's case for substantial
5 abuse under § 707(b) only on motion by the United States
6 trustee or on the court's own motion and after a hearing on
7 notice to the debtor, the trustee, the United States trustee, and
8 any other entities as the court directs.

9 (1) A motion to dismiss a case for substantial abuse
10 may be filed by the United States trustee only within 60
11 days after the first date set for the meeting of creditors
12 under § 341(a), unless, <u>on request filed by the United</u>
13 <u>States trustee</u> before the time has expired, the court for
14 cause extends the time for filing the motion <u>to dismiss</u>.

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

15 The United States trustee shall set forth in the motion all
16 matters to be submitted to the court for its consideration
17 at the hearing.

18 * * * * *

COMMITTEE NOTE

This rule is amended to permit the court to grant a timely request filed by the United States trustee for an extension of time to file a motion to dismiss a chapter 7 case under § 707(b), whether the court rules on the request before or after the expiration of the 60-day period.

Reporter's Note on Text of Rule 1017(e). The above text of Rule 1017(e) is not based on the text of the rule in effect on this date. The above text embodies amendments that have been promulgated by the Supreme Court in April 1999 and, unless Congress acts with respect to the amendments, will become effective on December 1, 1999.

GAP Report on Rule 1017(e). No changes since publication.

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

1 (a) TWENTY-DAY NOTICES TO PARTIES IN
2 INTEREST. Except as provided in subdivisions (h), (i), and
3 (l) of this rule, the clerk, or some other person as the court

4 may direct, shall give the debtor, the trustee, all creditors and

5 indenture trustees at least 20 days' notice by mail of:

6 * * * * *

7 (6) ~~hearings on all applications for compensation or~~

8 ~~reimbursement of expenses totaling in excess of $500~~ a

9 hearing on any entity's request for compensation or

10 reimbursement of expenses if the request exceeds $1,000;

11 * * * * *

COMMITTEE NOTE

Paragraph(a)(6) is amended to increase the dollar amount from $500 to $1,000. The amount was last amended in 1987, when it was changed from $100 to $500. The amendment also clarifies that the notice is required only if a particular entity is requesting more than $1,000 as compensation or reimbursement of expenses. If several professionals are requesting compensation or reimbursement, and only one hearing will be held on all applications, notice under paragraph (a)(6) is required only with respect to the entities that have requested more than $1,000. If each applicant requests $1,000 or less, notice under paragraph (a)(6) is not required even though the aggregate amount of all applications to be considered at the hearing is more than $1,000.

If a particular entity had filed prior applications or had received compensation or reimbursement of expenses at an earlier time in the

case, the amounts previously requested or awarded are not considered when determining whether the present application exceeds $1,000 for the purpose of applying this rule.

GAP Report on Rule 2002(a). No changes since publication.

Rule 4003. Exemptions

1 * * * * *

2 (b) ~~OBJECTIONS~~ OBJECTING TO A CLAIM OF
3 EXEMPTIONS. ~~The trustee or any creditor may file~~
4 ~~objections~~ A party in interest may file an objection to the list
5 of property claimed as exempt only within 30 days after ~~the~~
6 ~~conclusion of~~ the meeting of creditors held ~~pursuant to Rule~~
7 ~~2003(a)~~ under § 341(a) is concluded or within 30 days after
8 ~~the filing of~~ any amendment to the list or supplemental
9 schedules is filed, whichever is later. ~~unless, within such~~
10 ~~period, further time is granted by the court.~~ The court may, for
11 cause, extend the time for filing objections if, before the time
12 to object expires, a party in interest files a request for an

13 extension. Copies of the objections shall be delivered or

14 mailed to the trustee, ~~and to~~ the person filing the list, and the

15 attorney for ~~such~~ that person.

16 * * * * *

COMMITTEE NOTE

This rule is amended to permit the court to grant a timely request for an extension of time to file objections to the list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day period. The purpose of this amendment is to avoid the harshness of the present rule which has been construed to deprive a bankruptcy court of jurisdiction to grant a timely request for an extension if it has failed to rule on the request within the 30-day period. See In re Laurain, 113 F.3d 595 (6th Cir. 1997); Matter of Stoulig, 45 F.3d 957 (5th Cir. 1995); In re Brayshaw, 912 F.2d 1255 (10th Cir. 1990). The amendments clarify that the extension may be granted only for cause. The amendments also conform the rule to § 522(l) of the Code by recognizing that any party in interest may file an objection or request for an extension of time under this rule. Other amendments are stylistic.

GAP Report on Rule 4003(b). The words "trustee or creditor" were replaced by "party in interest" to conform to § 522(l) of the Bankruptcy Code which permits any party in interest to object to claimed exemptions. Style revisions also were made to the published draft.

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 ~~pursuant to~~
6 under Rule 1017(e), the court shall forthwith grant the
7 discharge unless:

8 ~~(a)~~(A) the debtor is not an individual,

9 ~~(b)~~(B) a complaint objecting to the discharge has
10 been filed,

11 ~~(c)~~(C) the debtor has filed a waiver under
12 § 727(a)(10),

13 ~~(d)~~(D) a motion to dismiss the case under
14 ~~pursuant to~~ Rule 1017(e) is pending,

15 ~~(e)~~(E) a motion to extend the time for filing a
16 complaint objecting to discharge is pending, ~~or~~

17 (F) a motion to extend the time for filing a motion
18 to dismiss the case under Rule 1017(e)(1) is pending,
19 or
20 ~~(f)~~(G) the debtor has not paid in full the filing fee
21 prescribed by 28 U.S.C. § 1930(a) and any other fee
22 prescribed by the Judicial Conference of the United
23 States under 28 U.S.C. § 1930(b) that is payable to the
24 clerk upon the commencement of a case under the
25 Code.

* * * * *

COMMITTEE NOTE

Subdivision (c) is amended so that a discharge will not be granted while a motion requesting an extension of time to file a motion to dismiss the case under § 707(b) is pending. Other amendments are stylistic.

GAP Report on Rule 4004(c). No changes since publication except for style revisions.

Rule 5003. Records Kept By the Clerk

1 * * * * *

2 (e) REGISTER OF MAILING ADDRESSES OF
3 FEDERAL AND STATE GOVERNMENTAL UNITS. The
4 United States or the state or territory in which the court is
5 located may file a statement designating its mailing address.
6 The clerk shall keep, in the form and manner as the Director
7 of the Administrative Office of the United States Courts may
8 prescribe, a register that includes these mailing addresses, but
9 the clerk is not required to include in the register more than
10 one mailing address for each department, agency, or
11 instrumentality of the United States or the state or territory.
12 If more than one address for a department, agency, or
13 instrumentality is included in the register, the clerk shall also
14 include information that would enable a user of the register to
15 determine the circumstances when each address is applicable,
16 and mailing notice to only one applicable address is sufficient

17 to provide effective notice. The clerk shall update the register
18 annually, effective January 2 of each year. The mailing
19 address in the register is conclusively presumed to be a proper
20 address for the governmental unit, but the failure to use that
21 mailing address does not invalidate any notice that is
22 otherwise effective under applicable law.

23 ~~(e)~~ (f) OTHER BOOKS AND RECORDS OF THE
24 CLERK. The clerk shall ~~also~~ keep ~~such~~ any other books and
25 records ~~as may be~~ required by the Director of the
26 Administrative Office of the United States Courts.

COMMITTEE NOTE

Subdivision (e) is added to provide a source where debtors, their attorneys, and other parties may go to determine whether the United States or the state or territory in which the court is located has filed a statement designating a mailing address for notice purposes. By using the address in the register — which must be available to the public — the sender is assured that the mailing address is proper. But the use of an address that differs from the address included in the register does not invalidate the notice if it is otherwise effective under applicable law.

The register may include a separate mailing address for each department, agency, or instrumentality of the United States or the state or territory. This rule does not require that addresses of municipalities or other local governmental units be included in the register, but the clerk may include them.

Although it is important for the register to be kept current, debtors, their attorneys, and other parties should be able to rely on mailing addresses listed in the register without the need to continuously inquire as to new or amended addresses. Therefore, the clerk must update the register, but only once each year.

To avoid unnecessary cost and burden on the clerk and to keep the register a reasonable length, the clerk is not required to include more than one mailing address for a particular agency, department, or instrumentality of the United States or the state or territory. But if more than one address is included, the clerk is required to include information so that a person using the register could determine when each address should be used. In any event, the inclusion of more than one address for a particular department, agency, or instrumentality does not impose on a person sending a notice the duty to send it to more than one address.

GAP Report on Rule 5003. No changes since publication.