Appendix B

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OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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BANKRUPTCY RULES

August 15, 1979

SUGGESTED INTERIM BANKRUPTCY RULES

The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States is pleased to distribute the enclosed guidelines, in the form of interim rules to guide bankruptcy courts. These temporary rules are designed to meet substantive and procedural changes mandated by the Act establishing a Uniform Law on the Subject of Bankruptcies, PL 95-598, 92 Stat 2549, approved November 6, 1978, which codified bankruptcy law under Title 11, United States Code. The new Bankruptcy Code is applicable to cases filed on or after October 1, 1979.

The Advisory Committee is now undertaking a complete revision of the bankruptcy rules in the light of the new code. This task is formidable. The drafting process will be deliberate and, of necessity, will take some time. So that the bench and bar may have some guidance pending the completion of this process, the committee requested its Reporters, Professors Lawrence P. King and Walter Taggart, to draft interim rules. Designed to assist the bench and bar in processing cases brought under the new code, the drafts seek to provide guidance in two discrete areas -- in applying existing bankruptcy rules where appropriate under the new code, and in filling gaps in present rules created by the new legislation. The committee examined, discussed, and modified several drafts prepared by the Reporters and are satisfied that the interim rules now being distributed do qualify as temporary guidelines until permanent rules are drafted and approved.

The bench and bar are cautioned that these suggestions have not been approved by the Committee on Rules of Practice and Procedure, the Judicial Conference of the United States, by the Supreme Court, or by the Congress. Thus, they will be binding in law only to the extent that they are adopted as local bankruptcy rules or are made applicable to a particular case by a bankruptcy judge in the exercise of the judicial function. The guidelines are issued, therefore, only as tentative suggestions of the Advisory Committee. Although we do not represent that these suggestions will reflect the ultimate recommendation of our committee, we are satisfied that they should be adopted as local rules until the committee's formal work is completed.

Recognizing that there would be a period of time before new rules could be promulgated, Congress provided that existing bankruptcy rules, to the extent they are not inconsistent with the new law, are to remain effective until they "are repealed or superseded" by new rules. The bench and bar must determine, on a case by case basis, whether an existing rule is consistent or inconsistent with the statute; that determination will not always be a simple one. The suggested interim rules, of course, are designed for areas affected by the new Bankruptcy Code and are not covered by existing rules.

The Committee encourages the adoption of these guidelines as local rules. Widespread adoption will provide a more uniform procedure for applying the Bankruptcy Code and at the same time supply a varied base of experience that should be helpful in the ongoing work of the Advisory Committee.

In emphasizing the preliminary nature of these guidelines, the committee earnestly solicits comments from the bench and bar concerning the usefulness of the draft suggestions. Comments will be gratefully received and may be addressed to:

The Advisory Committee on Bankruptcy Rules
Administrative Office of the United States
Courts
Washington, D.C. 20544

Respectfully submitted,

Ruggero J. Aldisert
U.S. Circuit Judge
Chairman

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Rule 1001

Meaning of Words Applicable in Cases Filed under Title 11, United States Code; Definitions

1 (a) Meaning of Words. The following words and
2 phrases used in the Federal Rules of Bankruptcy Procedure
3 applicable in cases filed under title 11, United States Code
4 on and after October 1, 1979 have the meaning herein indi-
5 cated, unless they are inconsistent with the context:

6 (1) "Act" or "Bankruptcy Act" means "title 11,
7 United States Code."

8 (2) "Adjudication" means "order for relief."

9 (3) "Bankrupt" means "debtor."

10 (4) "Bankruptcy" or "bankruptcy case" means Chapter
11 7, 9, 11 or 13 case as the context requires.

12 (5) "Chapter VIII, X, XI, or XII case" means "chapter
13 11 case."

14 (6) "Clerk of the district court" means "clerk of
15 the bankruptcy court."

16 (7) "Court" means "bankruptcy court."

17 (8) "Referee," or "referee in bankruptcy" means
18 "bankruptcy judge."

19 (b) Definitions. The definition of words and
20 phrases in title 11, United States Code govern their use in
21 these rules to the extent they are not inconsistent with the
22 rules. In addition, the following words and phrases used in
23 these rules have the meaning herein indicated unless they are
24 inconsistent with the context:

25 (1) "Address" includes house or apartment number,
26 street, post office box, state, and zip code.

27 (2) "Bankruptcy Code" or "Code" means title 11 of
28 the United States Code.

29 (3) "Trustee" includes "debtor in posession."

Note

These rules make some of the Federal Rules of Bankruptcy Procedure, e.g., Bankruptcy Rules, Chapter XI Rules, applicable in cases filed under title 11 U.S.C. Additionally, § 405(d) of Pub. L. 95-598 provides for the continued applicability of the Bankruptcy Rules to the extent they are not inconsistent with the statute until new rules are promulgated pursuant to 28 U.S.C. § 2075. The substance of many of the rules is not inconsistent but the terminology or labels may not conform to that used in Pub. L. 95-598. This rule indicates the substitution or translation of certain terms that is necessary for these purposes.

Subdivision (b) defines "Bankruptcy Code" and "Code" for use in these rules in place of title 11 United States Code. Section 101 of Pub. L. 95-598 (as distinguished from § 101 of 11 U.S.C.), codifies the law of bankruptcy and enacts it as title 11, United States Code but it does not provide for a short title.

PART I

PETITION AND PROCEEDINGS RELATING THERETO AND ORDER FOR RELIEF

Rule 1002

Debtor's Petition

1 (a) Form. A debtor's petition commencing a volun-
2 tary case shall conform substantially to Form No. 1.

3 (b) Number of Copies.

4 (1) Chapter 7 (Liquidation) and 13 (Adjustment of
5 Debts of an Individual with Regular Income) Cases. An original
6 and 3 copies of a petition requesting relief under chapter 7 or
7 chapter 13 of the Bankruptcy Code shall be filed with the
8 court. The clerk of the bankruptcy court shall transmit one
9 copy of a petition requesting relief under subchapter III of
10 chapter 7 (Stockbroker Liquidation) to the Securities Investor
11 Protection Corporation and one copy of a petition requesting
12 relief under subchapter IV of chapter 7 (Commodity Broker
13 Liquidation) to the Commodity Futures Trading Commission.

14 (2) Chapter 9 (Municipality) and 11 (Reorganization)
15 Cases. An original and 6 copies of a petition requesting relief
16 under chapter 9 or chapter 11 of the Code shall be filed with
17 the court. The clerk of the bankruptcy court shall transmit 2

18 copies to the Securities and Exchange Commission, one copy to
19 the District Director of Internal Revenue for the district in
20 which the case is filed, one copy of a chapter 9 petition to
21 the Secretary of State of the state in which the debtor is
22 located, and one copy of a chapter 11 petition to the Secre-
23 tary of the Treasury. If the petition requests relief under
24 subchapter IV of chapter 11 of the Code, the clerk of the
25 bankruptcy court shall also transmit one copy to the Inter-
26 state Commerce Commission and one copy to the Secretary of the
27 Department of Transportation.

Note

This rule consolidates the provisions of Rules 103, 8-102, 9-3, 10-104, 11-6, 12-6, and 13-103 of the Federal Rules of Bankruptcy Procedure. Reference should also be made to Rule X-1002 which requires the clerk to transmit a copy of all petitions to the United States trustee if the petition is filed in a district specified in 28 U.S.C. § 581.

Pursuant to 11 U.S.C. §§ 301-304, all cases under title 11, whether voluntary (§ 301), joint (§ 302), involuntary (§ 303), or ancillary to a foreign proceeding (§ 304), are commenced by the filing of a petition with the bankruptcy court.

Rule 1003

Involuntary Petition

1 (a) Form and Number. An involuntary petition
2 shall conform substantially to Form No. 9. The number and
3 distribution of copies shall be as specified in Rule 1002.

4 (b) Transferor or Transferee of Claim. A trans-
5 feror or transferee of a claim shall annex to the original
6 and each copy of the petition a copy of all documents evi-
7 dencing the transfer, whether transferred unconditionally,
8 for security, or otherwise, and a signed statement that the
9 claim was not transferred for the purpose of commencing the
10 case and setting forth the consideration for and terms of the
11 transfer. A person who has transferred or acquired a claim
12 for the purpose of commencing a chapter 7 Liquidation, or
13 chapter 11 Reorganization case shall not be a qualified
14 petitioner.

Note

Involuntary petitions may be filed only for relief under chapter 7, Liquidation, or 11, Reorganization, of the Bankruptcy Code. See 11 U.S.C. § 303(a). This rule is adapted from Rule 10-105 and Rule 104(d) of the Federal Rules of Bankruptcy Procedure.

The basic procedural steps that occur on and after the filing of an involuntary petition are described in these set of rules as well as those of the Federal Rules of Bankruptcy Procedure that remain applicable because not inconsistent with the Bankruptcy Code. For example, Rule 111 of

F.R.B.P., Service of Petition and Process, remains applicable particularly by use of Rule 1001 of these rules which makes the necessary translation of terms. Similarly, Rule 112 of F.R.B.P., Responsive Pleading or Motion, setting the time for filing an answer or motion remains applicable, as does Rule 121 which makes various rules in Part VII of F.R.B.P. applicable to the proceedings on a contested petition.

In these rules, reference should be made to Rule 1004, containing special provisions with respect to a partnership petition; Rule 1008, Examination of Debtor on Issue of Nonpayment of Debts; and Rule 1009, Hearing and Disposition of Petition. The Federal Rules of Bankruptcy Procedure and these rules together with statutory provisions in 11 U.S.C. § 303 provide the procedural structure concerning proceedings related to an involuntary petition, whether for liquidation under chapter 7 or reorganization under chapter 11 of the Code.

Rule 1004

Partnership Petition

1 (a) Voluntary Petition. A voluntary petition may
2 be filed by all the general partners on behalf of the partner-
3 ship.

4 (b) Involuntary Petition. Within 5 days after the
5 filing of an involuntary petition, the petitioning partners or
6 petitioning creditors shall send a copy of the petition by
7 first-class mail postage prepaid to the last known address
8 of, or deliver a copy to, each general partner who has not
9 joined in the petition or who has not been served.

Note

This rule is adapted from Rule 105 and complements 11 U.S.C. §§ 301 and 303(b)(3). The type of service conforms with that contained in Rule 704(c), i.e., first-class mail rather than certified mail as specified in Rule 105.

Rule 1005

Caption of Petition

1 The caption of a petition commencing a case under
2 the Bankruptcy Code shall contain the name of the court, the
3 title of the case, and the docket number. The title of the
4 case shall include the name of the debtor and all other names
5 used by him within 6 years before the filing of the petition.
6 If the petition is not filed by the debtor, the petitioners
7 shall include all other names used by the debtor according to
8 their best information.

Note

Arguably Rule 106 of the Federal Rules of Bankruptcy Procedure remains applicable but by rewriting it here the cross reference to Rule 904(b) is eliminated and it is made clear that the provisions apply to all cases under the Code, not only to liquidation cases.

In the title of the case, there should be included all other names used by the debtor, such as trade names, former married names, and maiden name. See also Form No. 1 and the Note following.

Rule 1006

Filing Fees

1 (a) General Requirement. Except as otherwise pro-
2 vided in subdivision (b), every petition shall be accompanied
3 by the prescribed filing fees.

4 (b) Payment of Filing Fees in Installments.

5 (1) Application for Permission to Pay Filing Fees
6 in Installments. *A voluntary petition filed by an individual*
7 shall be accepted by the clerk of the bankruptcy court if
8 accompanied by an application signed by the applicant for
9 permission to pay the filing fee in installments. The appli-
10 cation shall state that the applicant is unable to pay the
11 filing fee except in installments, the proposed terms of the
12 installment payments, and that the applicant has paid no money
13 and transferred no property to his attorney for services in
14 connection with the case. The application shall be filed in
15 duplicate, one copy for the clerk and one for the bankruptcy
16 judge.

17 (2) Action on Application. Prior to the meeting
18 of creditors, the court after a hearing may make an order
19 permitting the payment of the filing fees in installments to
20 the clerk of the bankruptcy court and fixing the number of

21 installments and the amount and date of payment of each
22 installment. The number of installments permitted shall not
23 exceed 4, and the final installment shall be payable not later
24 than 4 months after the filing of the petition. For cause
25 shown, however, the court may extend the time for payment of
26 any installment to a date not later than 6 months after the
27 date of filing the petition.

Note

28 U.S.C. § 1930 specifies the filing fees to be paid for petitions under chapters 7, 9, 11 and 13 of title 11, United States Code. It also permits the payment in installments by individual debtors.

Subdivision (b) is adapted from Bankruptcy Rule 107.

Rule 1007

Chapter 11 Reorganization Case: Lists, Schedules and Statement of Affairs

1 (a) List of 10 Largest Creditors.

2 (1) Voluntary Case. Notwithstanding subdivision
3 (d) of this rule, the debtor shall file with his petition a
4 list containing the names and addresses of the 10 largest
5 unsecured creditors, excluding insiders.

6 (2) Involuntary Case. The list required by para-
7 graph (1) of this subdivision shall be filed by the debtor
8 forthwith after entry of an order for relief under 11 U.S.C.
9 § 303(h).

10 (b) List of Creditors and Equity Security Holders.
11 The debtor shall file with the court (1) a list of the
12 debtor's creditors of each class, showing the amounts and
13 character of their claims and securities and, so far as known,
14 the name and address or place of business of each creditor and
15 a statement whether the claim is disputed, contingent or
16 unliquidated as to amount, and (2) a list of the debtor's
17 equity security holders of each class showing the number and
18 kind of interests registered in the name of each holder, and
19 the last known address or place of business of each holder.

20 (c) Schedules and Statements Required. Unless the
21 court orders otherwise, the debtor shall file with the court
22 schedules of assets and liabilities, a statement of financial
23 affairs, and a statement of his executory contracts, prepared
24 by him in the manner prescribed by Forms No. 6 and either
25 No. 7 or No. 8, whichever is appropriate.

26 (d) Time Limits. Except as otherwise provided
27 herein, the schedules, statements and lists, if not previously
28 filed in a pending liquidation case, shall be filed with the
29 petition in a voluntary case or if the petition is accompanied
30 by a list of all the debtor's creditors and their addresses,
31 within 15 days thereafter. The schedules, statements, and
32 lists shall be filed by an involuntary debtor within 15 days
33 after entry of the order for relief. Any extension of time
34 for the filing of the schedules, statements and lists may be
35 granted only on application, for cause shown and on notice to
36 any committee, trustee, examiner or other party as the
37 court may direct.

38 (e) Number of Copies. The number of copies of
39 the schedules, statements and lists shall correspond to the
40 number of copies of the petition required by these rules.

41 (f) Partnership and Partners. The general partners
42 of a debtor partnership shall prepare and file the schedules

43 of the assets and liabilities, statement of financial affairs,
44 and statement of executory contracts of the partnership.

45 (g) Interests Acquired or Arising After Petition.
46 Bankruptcy Rule 108(e) applies in chapter 11, Reorganization
47 cases except that the supplemental schedule need not be filed
48 with respect to property or interests acquired after confirma-
49 tion of a plan. Notwithstanding subdivision (j) of this rule,
50 the supplemental schedule shall also be filed in chapter 7,
51 Liquidation, and chapter 11, Reorganization cases with respect
52 to property that becomes part of the estate pursuant to 11
53 U.S.C. § 541(a)(5)(B).

54 (h) List of Security Holders or Information in Pos-
55 session of Another Entity. On cause shown, after notice and
56 a hearing, the court may direct an entity other than the
57 debtor or trustee, to disclose any list of security holders
58 in its possession or under its control, indicating the names,
59 addresses and securities held by any of them. The entity
60 possessing this list may be required to produce the list, a
61 true copy thereof, or permit the inspection or copying
62 thereof, or otherwise disclose the information.

63 (i) Impounding of Lists. On cause shown the court
64 may direct the impounding of the lists filed under this
65 rule, in which event --

66 (1) the debtor, or the trustee, or any indenture
67 trustee, creditor, equity security holder or committee ap-
68 pointed pursuant to 11 U.S.C. § 1102 or § 151102 shall be
69 permitted their inspection or use on such terms as the court
70 may prescribe; and

71 (2) on cause shown the court may refuse to permit
72 inspection by any entity.

73 (j) Applicability of Rule. This rule applies in
74 cases commenced under chapter 11, Reorganization, of the
75 Bankruptcy Code except that only subdivisions (b), (h) and (i)
76 apply in a case commenced by or against a railroad corpora-
77 tion and the lists required by subdivision (b) shall be filed
78 within the time fixed by the court.

Note

This rule is an adaptation of Rules 108, 8-106, 10-108 and 11-11 of the Federal Rules of Bankruptcy Procedure.

Subdivision (a) is new and requires that a list of the 10 largest creditors be filed with the petition. The court or the United States trustee, pursuant to 11 U.S.C. § 1102 or § 151102, is required to appoint a committee of unsecured creditors as soon as practicable after the order for relief. That committee, generally, is to consist of the 7 largest unsecured creditors who are willing to serve. Thus, the court or the United States trustee needs the information to be supplied by the list provided for under this subdivision. See also Rule X-1002 which requires the clerk to send the United States trustee, in the pilot districts, a copy of the petition, lists, and schedules.

Subdivision (b) is derived from Rules 8-106 and 10-108, as are subdivisions (h) and (i). Equity security holders, as defined in § 101(15), (16) of the Code includes stockholders.

Subdivision (c) is derived from Rule 11-11 and is in conformity with 11 U.S.C. § 521. This subdivision indicates the forms that are to be followed for the requisite papers.

Subdivisions (d) and (e) specify the time periods for filing the papers required by the rule as well as the number of copies. They are derived, for the most part, from Rule 11-11; the provisions dealing with an involuntary case are derived from Rule 108. Under the Bankruptcy Code, a chapter 11 case may be commenced on an involuntary petition (§ 303(a)), whereas under the Act, a Chapter XI case could be commenced only on a voluntary petition. An application for an extension of time to file the schedules and statements is required to be made on notice to parties, as the court may direct, including a creditors' committee if one has been appointed under § 1102 or § 151102 of the Code and a trustee or examiner if one has been appointed pursuant to § 1104 or § 151104 of the Code. In a pilot district such notice should also be given to the United States trustee. See Rule X-1002. Although written notice is preferable, it is not required by the rule; in proper circumstances it may be by telephone or otherwise.

Subdivision (f) is derived from Rule 11-11.

Subdivision (g) incorporates Rule 108(e) for chapter 11 purposes. The final sentence is added to indicate the change made by 11 U.S.C. § 541(a)(5) and includes within the coverage of the supplemental schedule property acquired after the petition from a property settlement or divorce decree.

Subdivision (j) renders this rule applicable in chapter 11, Reorganization cases except for the limited applicability of subdivision (g) in chapter 7 cases. Rule 108 remains applicable in chapter 7, Liquidation cases; Rule 9-7 remains applicable in chapter 9, Municipality cases; Rule 13-107 remains applicable in chapter 13, Adjustment of Debts of an Individual with Regular Income cases.

Rule 1008

Examination of Debtor on Issue of Nonpayment of Debts in Involuntary Cases

1 Whenever a petition commencing an involuntary
2 case under § 303 of the Bankruptcy Code alleges that the
3 debtor is generally not paying his debts as they become due,
4 and the debtor denies the allegation, the debtor shall appear
5 in court at the trial, and prior thereto if ordered by the
6 court, with his books, papers, and accounts, and submit to
7 an examination as to all matters bearing on the allegation.
8 If the debtor fails so to appear or submit to the examination,
9 the court on motion may enter appropriate orders, including
10 those specified in paragraphs (A), (B), and (C), of Rule
11 37(b)(2) of the Federal Rules of Civil Procedure. This
12 examination does not preclude the procedures available under
13 Bankruptcy Rules 121 and 205.

Note

This rule is adapted from Rule 114 which is inconsistent with 11 U.S.C. § 303(h) in that Rule 114 relates to acts of bankruptcy no longer applicable. The thrust of the rule, however, should continue with respect to the financial basis for an involuntary petition under 11 U.S.C. § 303(h). Since the provisions in 11 U.S.C. § 303 apply equally to chapter 7 and 11 cases, this rule may apply in both types of cases as well.

Rule 1009

Hearing and Disposition of Petition in Involuntary Cases

1 (a) Contested Petition. The court shall determine
2 the issues of a contested petition at the earliest practicable
3 time and order relief, dismiss the case, or enter other
4 appropriate orders.

5 (b) Default. If no pleading or other defense to a
6 petition is filed within the time provided by Bankruptcy Rule
7 112, the court shall on the next day, or as soon thereafter as
8 practicable, order relief as specified in the petition or
9 enter other appropriate orders.

10 (c) Order for Relief. An order for relief shall
11 conform substantially to Form No. 11 and shall be entered in
12 the docket of the bankruptcy court.

Note

This rule is adapted from Rule 115 (a) and (c) and applies in chapter 7 and 11 cases. Pursuant to 28 U.S.C. § 1480(b), the right of trial by jury under § 19a of the Bankruptcy Act has been abrogated and the availability of a trial by jury is subject to the discretion of the bankruptcy judge. Rule 9001 is an incorporation of Rule 38 of the Federal Rules of Civil Procedure and is made applicable to hearings on contested petitions.

Subdivision (e) of Rule 115 has not been carried over because its provisions are now covered by 11 U.S.C. § 303(i).

PART II

OFFICERS FOR ADMINISTERING THE ESTATE; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

Rule 2001

Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case

1 (a) Appointment. After an involuntary petition
2 for relief under chapter 7, Liquidation, of the Bankruptcy
3 Code is filed and before relief is ordered, appointment of an
4 interim trustee under § 303(g) of the Code may be made only on
5 application of a party in interest. The application may be
6 granted only after hearing on notice to the debtor and such
7 other parties in interest as the court may designate, except
8 that an interim trustee may be appointed without notice on a
9 showing that irreparable loss to the estate would otherwise
10 result. An application for appointment of an interim trustee
11 without notice and an order of appointment made thereon shall
12 state what irreparable loss would result if notice were
13 required.

14 (b) Application for Appointment. An application
15 for appointment of an interim trustee pursuant to § 303(g) of
16 the Code shall state the specific facts showing the necessity
17 for the appointment.

18 (c) Bond of Applicant. An interim trustee may not
19 be appointed under subdivision (a) of this rule unless the
20 applicant furnishes a bond in an amount with surety as the
21 court shall approve, conditioned to indemnify the debtor for
22 the costs, attorney's fee, expenses, and damages allowable
23 under § 303(i) of the Code.

24 (d) Order of Appointment. An order appointing an
25 interim trustee under this rule shall state why the appoint-
26 ment is necessary and shall specify his duties as provided in
27 § 303(g) or § 15303 of the Code. A copy of the order shall
28 forthwith be delivered to the debtor, or mailed to him at his
29 last known address, and to other persons as the court may
30 designate.

31 (e) Turnover and Report. After qualification of
32 the trustee selected under § 702 of the Code, the interim
33 trustee shall, unless otherwise ordered, (1) forthwith turn
34 over to the trustee all the records and property of the estate
35 in his possession or subject to his control as interim trustee
36 and, (2) within 30 days thereafter file his final report and
37 account.

Note

This rule is adapted from Rule 201. See also Rule 10-201. In conformity with title 11 of the United States Code, it substitutes "interim trustee" for "receiver." Subdivisions (a) and (e) of Rule 201 are not included because the provisions contained therein are found in detail in the statute, 11 U.S.C. §§ 303(g), 15303 or they are inconsistent with the statute, 11 U.S.C. §§ 701, 15701. Similarly, the provisions in Rule 201(d) with regard to a debtor's counterbond are not included because of their presence in 11 U.S.C. §§ 303(g) and 15303.

Subdivision (a) of this rule deals with a situation not covered by § 303(g) of the Code. When irreparable loss may result, the notice requirement is dispensed with but this should be the rare situation. Subdivision (d) requires that the order be delivered or mailed to the debtor forthwith so that as early a notification as is possible is given. The order would indicate the duties specified in § 303(g) or § 15303 as indicated in subdivision (e).

Reference should be made to Rule 218 for duties of any interim trustee appointed under this rule or § 303(g) of the Code with respect to, inter alia, keeping records and filing periodic reports with the court.

Rule 2002

Notices to Creditors, Equity Security Holders, and United States in Chapter 11 Reorganization Cases

1 (a) Applicability of Rule. This rule applies
2 only in a case filed under chapter 11 of the Bankruptcy Code.

3 (b) Twenty-Day Notices to Parties in Interest.
4 Except as provided in subdivisions (e) and (g) of this rule,
5 the clerk of the bankruptcy court shall give all creditors,
6 equity security holders and indenture trustees at least 20
7 days' notice by mail of (1) a meeting of creditors; (2) a
8 proposed sale of property, other than in the ordinary course
9 of business, including the time and place of any such sale,
10 unless the court for cause shown shortens the time or orders a
11 sale without notice; (3) the hearing on approval of a compro-
12 mise or settlement of a controversy, unless the court for
13 cause shown directs that notice not be sent; (4) the hearing
14 on the dismissal or conversion to another chapter of a case
15 when notice is required by § 1112(b) of the Code; (5) the time
16 fixed for filing objections to approval of the disclosure
17 statement and the hearing to consider approval of the dis-
18 closure statement; (6) the time fixed for filing objections to
19 confirmation of a plan; (7) the hearing to consider confirma-
20 tion of a plan; (8) the time fixed to accept or reject a
21 proposed modification of a plan when notice is required by

22 § 1127(b) of the Code; (9) hearings on all applications for
23 compensation or reimbursement of expenses.

24 The notice of a proposed sale of property, includ-
25 ing real estate, is sufficient if it generally describes the
26 property sold. The notice of a hearing on an application for
27 compensation or reimbursement of expenses shall specify the
28 applicant and the amounts requested. The clerk shall give
29 all equity security holders of the appropriate class at least
30 20 days' notice of a meeting of equity security holders.

31 (c) Other Notices. Except as provided in subdivi-
32 sions (e) and (g) of this rule, the clerk of the bankruptcy
33 court shall give notice by mail to the debtor, all creditors,
34 equity security holders and indenture trustees of (1) dismissal
35 of the chapter 11 case; (2) except as to equity security
36 holders, the time allowed for filing claims pursuant to Rule
37 3001; (3) the entry of an order directing that the chapter 11
38 case continue as a liquidation case under chapter 7 of the
39 Code; (4) the time fixed for filing a complaint objecting to
40 the debtor's discharge pursuant to Rule 4001; (5) the time
41 fixed for filing a complaint to determine the dischargeability
42 of a debt pursuant to § 523 of the Code as provided in Rule
43 4002; (6) the hearing on approval of a disclosure statement
44 pursuant to Rule 3006; (7) the time fixed for accepting or

45 rejecting a plan pursuant to Rule 3006(c); and (8) entry of an
46 order confirming a plan.

47 (d) Addresses of Notices. All notices to which a
48 creditor, equity security holder, or indenture trustee is
49 entitled under these rules shall be addressed to him as he or
50 his authorized agent may direct in a request filed with the
51 court; otherwise, to his address shown in the list or, if a
52 different address is stated in a proof of claim duly filed,
53 then at the address so stated.

54 (e) Notices to Committees. Copies of all notices
55 required to be mailed under this rule shall be mailed to the
56 committees appointed pursuant to the Code. Notwithstanding
57 the foregoing subdivisions, the court may order that notices
58 required by clauses (2), (3) and (9) of subdivision (b) be
59 mailed only to the committee or to its authorized agent
60 and to the creditors and equity security holders who file with
61 the court a request that all notices under these clauses be
62 mailed to them.

63 (f) Notices to the United States. Copies of no-
64 tices required to be mailed to all creditors under this rule
65 shall be mailed (1) if the debtor is a corporation, to the
66 Securities and Exchange Commission at Washington, District of
67 Columbia, and at such other place as it shall designate in

68 writing filed with the court; (2) to the District Director of
69 Internal Revenue for the district in which the case is pend-
70 ing; (3) to the United States attorney for the district in
71 which the case is pending whenever the lists or any other
72 papers filed in the case (A) disclose a debt to the United
73 States other than one for taxes and to the department, agency
74 or instrumentality of the United States through which the
75 debtor became indebted if disclosed by the filed papers, or
76 (B) to the Secretary of the Treasury if the filed papers
77 disclose a stock interest of the United States.

78 (g) Notice by Publication. If the court finds
79 that notice to creditors and equity security holders by mail
80 as provided in this rule is impracticable or that it is desir-
81 able to supplement such notice, the court may order publica-
82 tion thereof.

83 (h) Orders Designating Matter of Notices. Except
84 as otherwise provided by these rules, the court may from time
85 to time enter orders designating the matters in respect to
86 which, the person to whom, and the form and manner in which
87 notices shall be sent.

88 (i) Caption. The caption of every notice given
89 under this rule shall comply with Rule 1005.

Note

This rule applies only in chapter 11 Reorganization cases. The notice rules for a liquidation case (Rule 203), and chapter 13 case (Rule 13-203) continue to be applicable.

The notices required by this rule are to be given by the clerk of the bankruptcy court. When publication of notices is required or desirable, reference should be made to Rule 909.

Notice of the order for relief, required to be given by 11 U.S.C. § 342 is contained in Form No. 12, the notice and order of the meeting of creditors.

Rule 2003

Meeting of Creditors or
Equity Security Holders

1 (a) Date and Place. The court shall call a meeting
2 of creditors to be held not less than 20 nor more than 40 days
3 after the order for relief. If there is an appeal from or a
4 motion to vacate the order for relief, or if there is a motion
5 to dismiss the case, the court may set a later time for the
6 meeting. The meeting may be held at a regular place for
7 holding court or at any other place within the district
8 convenient for the parties in interest.

9 (b) Order of Meeting.

10 (1) Meeting of Creditors. The clerk of the bank-
11 ruptcy court shall preside at the meeting of creditors unless
12 the creditors who may vote for a trustee under § 702(a) of the
13 Bankruptcy Code and who hold a majority in amount of claims
14 that vote shall designate a presiding officer. The business
15 of the meeting shall include the examination of the debtor
16 and, if appropriate, the election of a trustee or of a credi-
17 tors' committee. When a trustee is elected the creditors
18 shall recommend the amount of the trustee's bond to be fixed
19 by the court.

20 (2) Meeting of Equity Security Holders. The clerk
21 of the bankruptcy court shall preside at any meeting of equity
22 security holders.

23 (3) Right to Vote. A creditor is entitled to vote
24 at a meeting if he has filed a proof of claim at or before
25 the meeting, unless objection is made to the claim or unless
26 the proof of claim is insufficient on its face. Notwithstand-
27 ing objection to the amount or allowability of a claim for
28 the purpose of voting, the court may temporarily allow it for
29 that purpose in an amount that seems proper to the court.

30 (c) Record of Proceeding. Electronic sound record-
31 ing equipment shall be used by the clerk of the bankruptcy
32 court to record the meeting of creditors or equity security
33 holders.

34 (d) Report to the Court. The clerk of the bank-
35 ruptcy court shall transmit to the court the name and address
36 of any person elected trustee or a member of a creditors'
37 committee. If an election is disputed, the presiding officer
38 shall promptly inform the court in writing of the dispute.
39 Pending disposition of the dispute by the court, the interim
40 trustee shall continue in office. If no application for the
41 resolution of the election dispute is made to the court within
42 10 days after the date of the creditors' meeting, the interim
43 trustee shall serve as trustee.

Note

Pursuant to 11 U.S.C. § 341(a) there is to be a meeting of creditors in a chapter 7, 11 or 13 case and under § 341(b), the court may order a meeting of equity security holders. A major change from prior law, however, is the prohibition in 11 U.S.C. § 341(c) against the judge's attendance at or presiding over the meeting.

The meeting is to be held between 20 and 40 days after the order for relief. In a voluntary case, the date of the order for relief is the date of the filing of the petition (11 U.S.C. § 301); in an involuntary case, it is the date of an actual order (11 U.S.C. § 303(i)).

This rule is applicable in chapter 7, 11 and 13 cases. Subdivision (b) provides that the clerk of the bankruptcy court will preside at the meeting but creditors may designate someone of their own choice to do so. In that event, the clerk will nevertheless remain to record the proceedings, take appearances, and the like. Use of the clerk is not contrary to the legislative policy of removing the judge from the meeting. The judge remains insulated from any information coming forth at the meeting and any information obtained by the clerk will not be relayed to the judge.

Since the judge must fix the bond of any trustee but cannot be present at the meeting, the rule allows the creditors to recommend the amount of the bond. They should be able to obtain relevant information concerning the extent of assets of the debtor at the meeting.

Subdivision (d) recognizes that the court must be informed immediately about the election or nonelection of a trustee in a chapter 7 case. Pursuant to Rule 2004, the judge is to officially inform the trustee of his election or appointment and as to how he is to qualify. This subdivision also takes note of the fact that there may be a disputed election but in no event may the presiding person resolve any dispute. For purposes of expediency, the results of the election should be obtained for each alternative presented by the dispute and reported to the court. Thus, when an interested party (not the presiding person) raises the dispute before the court, its resolution will determine the outcome and a new or adjourned meeting to conduct the election may not be necessary.

Rule 2004

Notice to Trustee of Selection

1 The clerk of the bankruptcy court shall immediately
2 notify the trustee of his selection, how he may qualify and,
3 if applicable, the penal sum of his bond. The trustee shall
4 advise the court in writing of his acceptance or rejection of
5 the office within 5 days after receipt of this notice.

Note

This rule is adapted from Rule 209(c). The remainder of that rule is inapplicable because its provisions are covered by 11 U.S.C. §§ 701-703, 321.

If the person selected as trustee accepts the office, he should also qualify within 5 days after his selection, as required by 11 U.S.C. § 322(a).

Rule 2005

Limitation on Appointment
of Trustees and Examiners

1 (a) Limitation on Appointments. Appointments of
2 trustees and examiners shall be made so that the annual ag-
3 gregate compensation of any person shall not be dispropor-
4 tionate or excessive, giving proper regard to geographic
5 constraints.

6 (b) Record to Be Kept. The clerk of the bankruptcy
7 court shall maintain a public record listing fees paid from
8 estates (1) to trustees and attorneys, accountants, appraisers,
9 auctioneers and other professional persons employed by trust-
10 ees, and (2) to examiners and appraisers appointed by the
11 court. The record shall include the name and docket number
12 of the case, the name of the individual or firm receiving the
13 fee and the amount of the fee paid. The record shall be
14 maintained chronologically, shall be kept current and open
15 to examination by the public without charge.

16 (c) Summary of Record. At the close of each an-
17 nual period, the clerk of the bankruptcy court shall prepare
18 a summary of the public record by individual or firm name, to
19 reflect total fees paid during the preceding year.

Note

This rule is adapted from Rule 213. The first sentence of that rule is omitted because of the provisions in 28 U.S.C. §§ 604(f) and 586 creating panels of private trustees.

The rule is not applicable to standing trustees serving in chapter 13 cases. See 11 U.S.C. § 1302.

A basic purpose of the rule is to prevent what Congress has defined as "cronyism." Appointment, whether in a chapter 7 or 11 case, should not center among a small select group of individuals unless the circumstances are such that it would be objectively warranted. The public record of appointments to be kept by the clerk will provide a means for monitoring the appointment process.

Subdivision (b) provides a convenient source for public review of fees paid from debtors' estates in the bankruptcy courts. Thus, public recognition of appointments, fairly distributed and based on professional qualifications and expertise, will be promoted and notions of improper favor dispelled. This rule is in keeping with the findings of the Congressional subcommittees as set forth in the Report of the Committee on the Judiciary, No. 95-595, 95th Cong., 1st Sess. 89-99 (1977). These findings included the observations that there were frequent appointments of the same person, contacts developed between the bankruptcy bar and the courts, and an unusually close relationship between the bar and the judges developed over the years. A major purpose of the new statute is to dilute these practices and instill greater public confidence in the system. Rule 2005 complements that laudatory purpose.

Rule 2006

Employment of Professional Persons

1 An order approving the employment of attorneys,
2 accountants, appraisers, auctioneers, agents, or other pro-
3 fessional persons pursuant to § 327 or § 1103 of the Bank-
4 ruptcy Code shall be made only on application of the trustee
5 or committee, stating the specific facts showing the necessity
6 for such employment, the name of the person to be employed,
7 the reasons for his selection, the professional services to be
8 rendered, and to the best of the applicant's knowledge all of
9 such person's connections with the debtor, the creditors, or
10 any other party in interest, and their respective attorneys
11 and accountants.

Note

This rule is adapted from the second sentence of Rule 215(a). The remainder of that rule is covered by 11 U.S.C. § 327.

PART III

CLAIMS AND DISTRIBUTION TO CREDITORS; PLAN OF REORGANIZATION

Rule 3001

Proof of Claim or Interest in Chapter 11 Reorganization Cases

1 (a) List of Creditors and Equity Security Holders.
2 The list of creditors and equity security holders prepared
3 and filed with the court pursuant to Rule 1007(b) shall con-
4 stitute prima facie evidence of the validity and amount of
5 claims of creditors which are not listed as disputed, con-
6 tingent, or unliquidated as to amount, and of interests.
7 Except as provided in subdivision (b)(3) of this rule with
8 respect to claims, it shall not be necessary for the holder
9 of such claim or interest to file a proof of claim or interest.

10 (b) Filing Proof of Claim.

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

14 (2) Who Must File. (A) Any creditor, includ-
15 ing the United States, a state, or any subdivision
16 thereof, whose claim is listed as disputed, contin-
17 gent, or unliquidated as to amount, shall file a

18 proof of claim within the time prescribed by sub-
19 division (b)(3) of this rule; any such creditor who
20 fails to do so shall not, with respect to such
21 claim, be treated as a creditor for the purposes of
22 voting and distribution.

23 (B) Notwithstanding the foregoing, the
24 court may, at any time, require the filing of a
25 proof of claim within such time as it may fix.
26 Any person required under this paragraph to file
27 a proof of claim who fails to do so shall not,
28 with respect to such claim, be treated as a creditor
29 for the purposes of voting and distribution.

30 (3) Time for Filing. A proof of claim may
31 be filed at any time prior to the approval of the
32 disclosure statement unless a different time is
33 fixed by the court on notice as provided in Rule
34 2002.

35 (4) Evidentiary Effect. A proof of claim exe-
36 cuted and filed in accordance with these rules shall
37 constitute prima facie evidence of the validity and
38 amount of such claim. It shall supersede any
39 listing of that claim made pursuant to Rule 1007.

40 (5) Form and Place of Filing. A proof of
41 claim shall consist of a statement in writing
42 setting forth a creditor's claim and, except as
43 provided in Rule 3002, shall be executed by the
44 creditor or by his authorized agent. Subdivisions
45 (b) and (c) of Bankruptcy Rule 302 apply in chapter
46 11 cases except that subdivision (c) shall not apply
47 to claims founded on bonds or debentures.

48 (6) Filing by Indenture Trustee. An indenture
49 trustee may file claims for all holders, known or
50 unknown, of securities issued pursuant to the
51 instrument under which he is trustee.

52 (c) Transfer of Claim. If a claim other than one
53 founded on a bond or debenture has been assigned, a statement
54 setting forth the terms of the assignment shall be filed with
55 the court and a copy thereof delivered to the trustee or the
56 debtor in possession.

57 (d) Objection to Allowance. An objection to the
58 allowance of a claim shall be in writing. A copy of the
59 objection and at least 10 days' notice or, if the claim is for
60 taxes, at least 30 days' notice of a hearing thereon shall be
61 mailed or delivered to the claimant, the debtor and the
62 trustee, or debtor in possession. If an objection is joined

63 with a demand for relief of the kind specified in Bankruptcy
64 Rule 701, the proceeding thereby becomes an adversary proceeding.

65 (e) Reconsideration of Claims. Bankruptcy Rule 307
66 applies in chapter 11 cases.

67 (f) Proof of Right to Record Status. For the
68 purposes of Rules 3007 and 3009 and for the purpose of
69 receiving notices, a person who is not the record holder of
70 a security may show that he is nevertheless entitled to be
71 treated as such holder of record by filing with the court
72 proof thereof. An objection to such proof may be filed by
73 any party in interest.

74 (g) Applicability of Rule. This rule applies only
75 in a case filed under chapter 11 of the Bankruptcy Code.

Note

This rule applies in a Chapter 11, Reorganization case. It is adapted from Rule 10-401 and complements 11 U.S.C. § 1111(a). Subdivisions (d) and (e) of Rule 10-401 have been deleted because those provisions are covered by 11 U.S.C. §§ 704 and 502.

Rule 3002

Claim By Codebtor in Chapter 11, Reorganization Cases

1 (a) Filing of Claim. If a creditor has not filed his
2 proof of claim pursuant to Rule 3001, a person who is or may
3 be liable with the debtor to that creditor, or who has secured
4 that creditor, may, during the time for filing claims pre-
5 scribed by Rule 3001, execute and file a proof of claim pur-
6 suant to this rule in the name of the creditor, if known,
7 or if unknown, in his own name. No distribution shall be
8 made on the claim except on satisfactory proof that the
9 original debt will be diminished by the amount of distribu-
10 tion. The creditor may nonetheless file a proof of claim
11 pursuant to Rule 3001(b) and it shall supersede the proof
12 of claim filed pursuant to the first sentence of this sub-
13 division.

14 (b) Filing of Acceptance; Substitution of Creditor.
15 A person who has filed a claim pursuant to the first sentence
16 of subdivision (a) of this rule may file an acceptance or
17 rejection of a plan in the name of the creditor, if known, or
18 if unknown, in his own name but if the creditor files a proof
19 of claim within the time permitted by Rule 3001 or files a
20 notice with the court of his intention to act in his own
21 behalf prior to confirmation, he shall be substituted for

22 such other person, with respect to that claim, for all pur-
23 poses of the case under chapter 11 of title 11, United States
24 Code.

Note

This rule is adapted from Rule 10-402.

Rule 3003

Withdrawal of Claim

1 A creditor may withdraw a claim as of right by
2 filing a notice of withdrawal, except as provided in this
3 rule. If, after a creditor has filed a proof of claim, an
4 objection is filed thereto or a complaint is filed against him
5 in an adversary proceeding, or the creditor has accepted or
6 rejected the plan or otherwise has participated significantly
7 in the case, he may not withdraw the claim save on motion with
8 notice to the trustee or debtor in possession, and on order of
9 the court containing such terms and conditions as the court
10 deems proper.

Note

This rule is derived from Rule 10-404.

Rule 3004

Filing of Claims by Debtor or Trustee

1 If a creditor fails to file his claim on or before
2 the first date set for the meeting of creditors, the debtor or
3 trustee may execute and file a proof of such claim in the name
4 of the creditor. The court shall forthwith mail notice of
5 such filing to the creditor and to the trustee. The creditor
6 may nonetheless file a proof of claim pursuant to Bankruptcy
7 Rule 302 or Rule 3001, which proof when filed shall supersede
8 the proof filed by the debtor or trustee.

Note

This rule is adapted from Rule 303 but conforms with the changes made by 11 U.S.C. § 501(c). The rule is applicable in chapter 7, Liquidation, cases and chapter 11, Reorganization, cases. Rule 303, from which it is adapted, permits only the filing of tax and wage claims by the debtor. Section 501(c) of the Bankruptcy Code, however, permits the filing by the debtor or trustee on behalf of any creditor.

Rule 3005

Filing of Plan and Disclosure Statement

1 (a) When Debtor Retained in Possession. The debtor
2 in possession may file a plan within 120 days after the date
3 of the order for relief. If the debtor has not filed a plan
4 within such time, or if the debtor has filed a plan that has
5 not been accepted, as provided in § 1121(c)(3) of the Bank-
6 ruptcy Code, within 180 days after the order for relief, a
7 plan may be filed thereafter by the debtor, a creditors'
8 committee, an equity security holders' committee, a creditor,
9 an equity security holder, or any indenture trustee.

10 (b) When Trustee Appointed. The court shall fix a
11 time within which the trustee shall file a plan or a report
12 of the reasons why a plan cannot be formulated, or his recom-
13 mendation that the case be converted to chapter 7 (Liquida-
14 tion), or 13 (Adjustment of Debts of an Individual with
15 Regular Income), or dismissed. A plan may also be filed
16 by the debtor, a creditors' committee, an equity security
17 holders' committee, a creditor, an equity security holder, or
18 any indenture trustee before the conclusion of the hearing
19 held pursuant to Rule 3006.

20 (c) Reduction or Enlargement of Time. On applica-
21 tion of a party in interest and after notice and a hearing,
22 the court, for cause shown, may reduce or extend the time
23 periods referred to in subdivisions (a) and (b) of this rule.

24 (d) Identification of Plan. Every proposed plan
25 and any modification thereof shall be dated and identified
26 with the name of the person or persons submitting or filing
27 it.

28 (e) Disclosure Statement. A disclosure statement
29 containing such information as is adequate pursuant to
30 § 1125 or § 1126(b) of the Code shall be filed with the plan
31 or thereafter but not later than a time fixed by the court.

32 (f) Applicability of Rule. This rule applies
33 only in a case filed under chapter 11 of the Code.

Note

This rule applies in chapter 11 cases only but includes a railroad reorganization case. In the latter instance subdivision (a) would be inapplicable because a trustee would always be appointed. The rule complements 11 U.S.C. § 1121, made applicable in railroad reorganization cases by 11 U.S.C. § 1161. It does not apply in chapter 9 cases; see 11 U.S.C. § 901, or in chapter 13 cases; see Rule 13-201 which remains applicable.

Some of the statutory provisions contained in § 1121 of the Code are repeated in the rule. This is done for the purpose of having a complete rule with respect to the matter of filing a plan.

Rule 3006

Approval of Disclosure Statement by Court

1 (a) Hearing on Disclosure Statement and Objections
2 Thereto. After the filing of a disclosure statement as pro-
3 vided in Rule 3005(e), the court shall hold a hearing on at
4 least 20 days' notice to the debtor, creditors, equity
5 security holders and other parties in interest as provided in
6 subdivision (e) of this rule, to consider such statement and
7 any objections or modifications thereto. Objections to the
8 disclosure statement shall be filed with the court and served
9 on the debtor, the trustee, if any, a committee appointed
10 under the Bankruptcy Code and such other entity as may be
11 designated by the court, at any time prior to approval of the
12 disclosure statement or by such earlier date as the court may
13 fix.

14 (b) Approval of Disclosure Statement. The court
15 shall rule on approval of the disclosure statement following
16 the hearing provided for under subdivision (a) of this rule.

17 (c) Dates Fixed for Acceptance and Confirmation.
18 On approval of the disclosure statement, the court shall fix
19 a time within which the holders of claims and interests may
20 accept or reject the plan and may fix a date for the hearing
21 on confirmation.

22 (d) Transmission and Notice to Creditors and
23 Equity Security Holders. On approval of a disclosure state-
24 ment, the clerk of the bankruptcy court shall mail to all
25 creditors and equity security holders (1) the plan or a
26 summary thereof approved by the court; (2) the disclosure
27 statement approved by the court; (3) a summary of the opinion
28 of the court, if any, approving the disclosure statement which
29 summary shall be approved by the court; (4) notice of the
30 date fixed, if any, for the hearing on confirmation; and (5)
31 such other information as the court may direct. In addition,
32 notice of the time within which acceptances and rejections of
33 such plan may be filed and a form of ballot conforming substan-
34 tially to Form No.25 shall be mailed to creditors and equity
35 security holders entitled to vote on the plan. The court may
36 direct that the opinion of the court be transmitted in place
37 of or in addition to the summary thereof specified in clause
38 (3) of this subdivision. In the event only summaries are
39 transmitted, the plan and opinion of the court shall be
40 provided on request without charge. For the purposes of this
41 subdivision, creditors and equity security holders shall
42 include holders of stock, bonds, debentures, notes, and other
43 securities of record at the date the order approving the
44 disclosure statement is entered.

45 (e) Notice: By Whom Transmitted. The court may
46 order the clerk of the bankruptcy court, the trustee, debtor
47 in possession or proponent of a plan to transmit the notices
48 or documents required by subdivision (a) or (d) of this rule.
49 If a person other than the clerk is so ordered, the court may
50 require use of ordinary envelopes under the direction and
51 supervision of the court or may order use of penalty envelopes.

52 (f) Applicability of Rule. This rule applies in
53 a case filed under chapter 9 (Adjustment of Debts of a Munici-
54 pality), or chapter 11 (Reorganization), of the Bankruptcy
55 Code.

Note

This rule is adapted from Rule 10-303 which deals with the approval of a Chapter X plan by the court. There is no requirement for plan approval in a chapter 11 case under title 11, United States Code but there is the requirement that a disclosure statement containing adequate financial information be approved by the court after notice and a hearing before votes on a plan are solicited. 11 U.S.C. § 1125(b).

Subdivision (a) of this rule provides for the hearing on the disclosure statement. Thus, a hearing would be required in all cases, whether it may be ex parte would depend on the circumstances of the case, but a mere absence of objections would not eliminate the need for a hearing. See 11 U.S.C. § 102(1).

No provision similar to Rule 10-303(f) is included. That subdivision together with Rule 10-304 prohibited solicitation of votes until after entry of an order approving the plan. 11 U.S.C. § 1126(b) explicitly provides that votes on a plan

may not be solicited until a disclosure statement, approved by the court, is transmitted. Pursuant to the change in rule-making power, a comparable provision in this rule is unnecessary. 28 U.S.C. § 2075.

It should be noted that, by construction, the singular includes the plural. Therefore, the phrase "plan or plans" or "disclosure statement or statements" has not been used although the possibility of multiple plans and statements is recognized.

Since 11 U.S.C. § 1125 is made applicable in both chapter 9 and railroad reorganization cases, 11 U.S.C. §§ 901, 1161, this rule applies to those types of cases as well.

Reference should also be made to 28 U.S.C. § 1930(b) pursuant to which the Judicial Conference may prescribe the same kind of fees at it may under 28 U.S.C. 1914(b). This may have some bearing on the costs of mailing.

Subdivision (e) is new. It permits the court to require a party other than the clerk of the bankruptcy court to bear the responsibility for transmitting the notices and documents specified in the rule. The alternatives and procedures are adapted from the Manual for Complex Litigation, ¶ 1.45, at p. 48 (as amended). As therein indicated, if the clerk is not used, "the court should require counsel to arrange for the reproduction of the notice after its approval by the court, to procure envelopes, affix postage on them in the proper amount, and mail them. These activities should be closely supervised by the court." Such supervision may, of course, be performed by the clerk of the bankruptcy court. The court may direct that penalty envelopes be used.

Rule 3007

Acceptance or Rejection of Plans

1 (a) Persons Entitled to Accept or Reject Plan;
2 Time for Acceptance or Rejection. Any creditor whose claim
3 is deemed allowed pursuant to § 502 of the Bankruptcy Code or
4 has been allowed by the court and, subject to subdivision (b)
5 of this rule, any creditor who is a security holder of record
6 at the date the order approving the disclosure statement is
7 entered whose claim has not been disallowed and any equity
8 security holder of record at the date the order approving the
9 disclosure statement is entered whose interest has not been
10 disallowed, may accept or reject a plan within the time fixed
11 by the court pursuant to Rule 3006. For cause shown and
12 within such time, the court may permit a creditor or equity
13 security holder to change or withdraw his acceptance or
14 rejection. Notwithstanding objection to a claim or interest,
15 the court may temporarily allow it to such extent as to the
16 court seems proper for the purpose of accepting or rejecting a
17 plan.

18 (b) Acceptances or Rejections Obtained Before Peti-
19 tion. Acceptances or rejections may be obtained before the
20 filing of the petition and may be filed with the court on
21 behalf of the holder of a claim or interest which is deemed

22 allowed pursuant to § 502 of the Code or allowed by the court
23 or on behalf of a creditor who is a security holder of
24 record at the date specified in the solicitation for the
25 purposes of such solicitation and whose claim has not been
26 disallowed, and on behalf of an equity security holder of
27 record at the date specified in the solicitation for the
28 purposes of such solicitation and whose interest has not
29 been disallowed. A holder of a claim or interest who has
30 accepted or rejected a plan before the commencement of a
31 case under the Code, shall not be deemed to have accepted or
32 rejected the plan if the court finds, after hearing on notice,
33 that the plan was not generally transmitted to creditors and
34 equity security holders or that an unreasonably short time was
35 prescribed for creditors and equity security holders to accept
36 or reject the plan.

37 (c) Form of Acceptance or Rejection. An accept-
38 ance or rejection shall be in writing, shall identify the plan
39 or plans accepted or rejected, shall be signed by the creditor
40 or equity security holder or his authorized agent, and shall
41 substantially conform to Form No. 25. If more than one
42 plan is transmitted pursuant to Rule 3006, an acceptance or
43 rejection may be filed by each creditor or equity security
44 holder for any number of such plans and if acceptances are

45 filed for more than one plan, the creditor or equity security
46 holder may indicate his preferences among the plans so accepted.

47 (d) Acceptance or Rejection by Partially Secured
48 Creditors. A creditor whose claim has been allowed in part
49 as a secured claim and in part as an unsecured claim shall
50 be entitled to accept or reject a plan in both capacities.

Note

Subdivision (a) is derived from Rule 10-305(a). It substitutes entry of the order approving the disclosure statement for the order approving a plan in conformity with the differences between Chapter X and chapter 11. But in keeping with the underlying theory, it continues to recognize that the lapse of time between the filing of the petition and entry of such order will normally be significant and during that interim bonds and equity interests can change ownership.

Subdivision (b) recognizes the former Chapter XI practice permitting a plan and acceptance to be filed with the petition, as does, e.g., 11 U.S.C. § 1126(b). However, because a plan under chapter 11 may treat shareholder interests, there should be some reference to a record date of ownership. In this instance the appropriate record date is that used in the prepetition solicitation materials because it is those acceptances or rejections which are being submitted to the court.

While 11 U.S.C. §1126(c),(d), and (e) prohibit use of an acceptance or rejection not procured in good faith, the added provision in subdivision (b) of the rule is somewhat more detailed. It would prohibit use of acceptances or rejections obtained prepetition when either only some but not all impaired creditors or equity security holders are solicited or when they are not given a reasonable opportunity to submit their acceptances or rejections. This provision together with 11 U.S.C. § 1126(e) gives the court the power to nullify abusive procedures that may be attempted.

Subdivisions (d) and (e) of Rule 10-305 are not continued since comparable provisions are contained in the statute; see 11 U.S.C. § 1126(c),(d),(e).

This rule applies in railroad reorganization cases because 11 U.S.C. § 1126 applies (see 11 U.S.C. § 1161) and in chapter 9 cases (see 11 U.S.C. § 901). It will apply, to a limited extent, in chapter 13 cases but only to the acceptance of a plan by a secured creditor. 11 U.S.C. § 1325(5)(A). Unsecured creditors do not have to accept a chapter 13 plan for it to be confirmed by the court.

It should be noted that while the singular "plan" is used throughout, by construction the plural is included.

Rule 3008

Confirmation of Plan

1 (a)(1) Objections to Confirmation. Objections to
2 confirmation of the plan shall be filed with the court and
3 served on the debtor, the trustee, if any, a committee ap-
4 pointed under the Bankruptcy Code and such other entity as may
5 be designated by the court, at any time prior to confirmation
6 or by such earlier date as the court may fix. An objection to
7 confirmation is governed by Rule 914.

8 (2) Hearing on Confirmation. The court shall rule
9 on confirmation of the plan after hearing on notice as provided
10 in Rule 2002. If no objection is timely filed under this
11 subdivision, the court may find, without hearing evidence,
12 that the plan has been proposed in good faith and not by any
13 means forbidden by law. If more than one plan has received
14 the requisite number of acceptances, the court shall consider
15 the preferences indicated by the creditors and equity security
16 holders pursuant to Rule 3007(c) in determining which plan
17 shall be confirmed.

18 (b) Order of Confirmation. The order of confirma-
19 tion shall conform substantially to Form No. 26 and notice
20 of entry of the order of confirmation shall be mailed prompt-
21 ly to the debtor, creditors, equity security holders and other
22 parties in interest as provided in Rule 2002.

Note

This rule is adapted from Rules 10-307, 11-38, and 13-213. It applies to cases filed under chapters 9, 11 and 13. Certain subdivisions of the earlier rules have not been included, such as, a subdivision revesting title in the debtor (11 U.S.C. § 541 does not transfer title out of the debtor as did § 70a of the Bankruptcy Act). See also 11 U.S.C. §§ 1141(b), 1327(b). Subdivision (b) of Rule 13-213 is not included because its provisions are contained in the statute; see 11 U.S.C. §§ 1322, 1325(b), 105.

7/2/79

Rule 3009

Distribution under Plan

1 After confirmation of a plan, distribution shall be
2 made, in accordance with the provisions of the plan, to
3 holders of stock, bonds, debentures, notes, and other securi-
4 ties of record at the date the order confirming the plan
5 becomes final whose claims or equity security interests have
6 not been disallowed and to other creditors whose claims have
7 been allowed, and to indenture trustees who have filed claims
8 pursuant to Rule 3001(b)(6) and which are allowed.

Note

This rule is derived from Rule 10-405(a). Subdivision (b) of that rule is covered by 11 U.S.C. § 1143.

Rule 3009, by its terms, will be applicable in chapter 9 and 11 cases, including railroad reorganizations, but not in chapter 13 cases.

Rule 3010

Consummation; Final Decree

1 (a) Orders in Aid of Consummation. The court may
2 make such orders as may be necessary or useful in aid of
3 consummation of a plan including fixing the time and manner
4 for the deposit and distribution of the cash or other consid-
5 eration under the plan, directing the debtor, trustee, mort-
6 gagees, indenture trustees, and other necessary parties to
7 execute and deliver such instruments as may be necessary to
8 effect a retention or transfer of property dealt with by the
9 confirmed plan, and to perform other acts, including the
10 satisfaction of liens.

11 (b) Final Decree. On consummation of the plan,
12 the court shall enter a final decree which shall contain
13 provisions (1) stating the effect of confirmation and con-
14 summation on the creditors and equity security holders of
15 the debtor; (2) discharging the trustee, if any; (3) making
16 such provisions by way of injunction or otherwise as may be
17 equitable; and (4) closing the estate.

Note

This rule is derived from Rule 10-309 and 11 U.S.C. § 1142.

PART IV

THE DEBTOR: DUTIES AND BENEFITS

Rule 4001

Relief from Automatic Stay

1 (a) Final Hearing. The stay of any act against
2 property of the estate under § 362(a) of the Bankruptcy Code
3 expires 30 days after a final hearing is commenced pursuant
4 to § 362(e)(2) of the Code unless within that time at or
5 after the final hearing the court determines that the stay
6 be continued.

7 (b) Ex Parte Relief from Stay. On the filing of
8 a complaint seeking relief from a stay under § 362(a) of the
9 Code, relief may be granted without written or oral notice to
10 the adverse party if (1) it clearly appears from specific
11 facts shown by affidavit or by a verified complaint that
12 immediate and irreparable injury, loss, or damage will result
13 to the plaintiff before the adverse party or his attorney can
14 be heard in opposition, and (2) the plaintiff's attorney
15 certifies to the court in writing the efforts, if any, which
16 have been made to give the notice and the reasons supporting
17 his claim that notice should not be required. The party
18 obtaining relief under this subdivision and § 362(f) of the
19 Code shall give written and oral notice thereof as soon as

20 possible to the trustee or debtor in possession and to the
21 debtor and, in any event, shall forthwith mail to such person
22 or persons a copy of the order granting relief. On 2 days'
23 notice to the party who obtained relief from the stay without
24 notice or on such shorter notice to that party as the court
25 may prescribe, the adverse party may appear and move its
26 reinstatement, and in that event the court shall proceed to
27 hear and determine such motion as expeditiously as the ends of
28 justice require.

Note

This rule complements § 362 of the Code which sets forth the provisions regarding the automatic stay that arises on the filing of a petition. That section and this rule are applicable in chapter 7, 9, 11 and 13 cases.

Subdivision (a) of the rule fills a procedural void left by § 362 of the Code. Pursuant to § 362(e), the automatic stay is terminated 30 days after a request is made for relief unless the court continues the stay as a result of a final hearing or, pending final hearing, after a preliminary hearing. If a preliminary hearing is held, § 362(e) requires the final hearing to be commenced within 30 days after the preliminary hearing. Even though the expressed legislative intent is to require expeditious resolution of a secured party's request for relief, § 362 is silent as to the time within which the final hearing must be concluded. Subdivision (a) imposes a 30-day deadline on the court to resolve the dispute.

At the final hearing, the stay is to be terminated, modified, annulled, or conditioned for cause, which includes, inter alia, lack of adequate protection. 11 U.S.C. § 362(d). The burden of proof on the existence of adequate protection is on the party opposing relief from the stay. 11 U.S.C. § 362(g)(2). Adequate protection is exemplified in 11 U.S.C. § 361.

Subdivision (b) complements § 362(f) which permits ex parte relief from the stay when there will be irreparable damage. This subdivision sets forth the procedure to be followed when relief is sought under §362(f). It is derived from Bankruptcy Rule 601(d).

Rule 4002

Grant or Denial of Discharge

1 Bankruptcy Rule 404 applies in cases filed under
2 chapter 7, Liquidation, of the Bankruptcy Code except that
3 (1) the references to § 14c of the Act shall be read as
4 references to § 727(a) of the Code and (2) notwithstanding
5 subdivision (d) of Rule 404, the court, on application of
6 the debtor, shall defer the entry of an order granting a
7 discharge for 45 days and, on application within the 45-day
8 period, the court may for cause further defer entry of the
9 order to a date certain.

Note

Rule 404 sets forth the procedure for filing objections to discharge. The statutory references are changed to conform with the Code.

Subdivision (d) of Rule 404 requires that if no timely complaint objecting to a discharge is filed and certain other statutory tests are satisfied, the discharge shall be granted forthwith. Section 524(c) of the Code authorizes the debtor to enter into binding reaffirmation agreements prior to the entry of a discharge. Immediate entry of the discharge order after the time fixed for filing of a complaint objecting to discharge will inhibit the debtor's right to enter into reaffirmation agreements. The most common situation is when the same date is fixed for filing objections to a discharge and dischargeability complaints. Entry of the discharge forthwith may preclude the debtor from settling any dischargeability litigation by the execution of a reaffirmation agreement. For the foregoing reasons, immediate entry of a discharge order is inconsistent with § 524(c).

This rule accommodates the debtor's § 524(c) right by according the debtor the opportunity to secure automatically an additional 45 days to conclude his reaffirmation agreements. For cause, the court may grant a further extension. The length of any extension is within the discretion of the court.

Rule 4003

Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt; Jury Trial

1 Bankruptcy Rule 409(a) applies in cases filed under
2 chapter 7, Liquidation, of the Bankruptcy Code except that the
3 reference to § 17c(2) of the Act shall be read as a reference
4 to § 523(c) of the Code.

Note

Subdivisions (b) and (c) of Rule 409 are unnecessary because of the expanded jurisdiction of the bankruptcy court and preservation of right to trial by jury where allowed by statute.

Rule 4004

Reaffirmation and Discharge Hearing

1 Within no more than 30 days after the entry of an
2 order granting or denying a discharge and on at least 10
3 days' notice to the debtor and trustee, if one is appointed,
4 the court shall hold a hearing as provided in § 524(d) of
5 the Bankruptcy Code. Applications by the debtor for
6 approval of reaffirmation agreements shall be filed before
7 or at the hearing.

Note

Section 524(d) of title 11, U.S.C., requires that the court hold a hearing to inform an individual debtor concerning the grant or denial of his discharge and the law applicable to reaffirmation agreements. In addition, if the debtor seeks to reaffirm a consumer debt not secured by real property the court is to rule on approval of the reaffirmation agreement at the hearing.

The notice of the § 524(d) hearing may be combined with the notice of the meeting of creditors or entered as a separate order.

PART V

COURTS OF BANKRUPTCY; OFFICERS AND PERSONNEL; THEIR DUTIES

Rule 5001

Prohibition on Ex Parte Contacts

1 Any party in interest and any attorney, accountant,
2 or employee of a party in interest shall refrain from ex parte
3 meetings and communications with the bankruptcy judge concern-
4 ing matters affecting a particular case or civil proceeding.

Note

This rule should be unnecessary because there should not be ex parte communications with a bankruptcy judge by any party in interest including a trustee or his attorney or the debtor or his attorney, in a chapter 7, 9, 11, or 13 case. Rule X-1006 has been included however, to offer guidance to the United States trustees appointed in the system newly created by Public Law 95-589. In order to avoid any misapprehension that might result from its omission, Rule 5001 is included to make clear that no party in interest, person representing a party in interest, or employee of a party in interest should have ex parte communications with a bankruptcy judge about the case. Of course, there is no reason why anyone who is not a party in interest should have such communications.

Contacts and relationships exist between the bankruptcy courts and the bar which are problems that the new law seeks to solve. The system should not only operate fairly but it must appear to operate fairly. H. Rep. No. 95-595, 95th Cong., 1st Sess. 95 et seq. (1977).

This rule and Rule X-1006 do not substitute for or limit any applicable canon of professional responsibility or judicial conduct. See, e.g., Canon 7, EC7-35, Disciplinary Rule 7-110(B) of the Code of Professional Responsibility: "Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he

presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party."; Canon 3A(4) of the Code of Judicial Conduct: "A judge should . . . neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.".

PART VI

COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6001

Proceeding to Avoid Indemnifying Lien or Transfer to Surety

1 Bankruptcy Rule 612 applies in cases under the
2 Bankruptcy Code except that the reference to "a lien voidable
3 under § 67a of the Act" shall be read as a reference to "a
4 judicial lien voidable under § 547 of the Code."

Note

Bankruptcy Rule 612 would remain applicable but for the reference to the Act. Judicial liens, to which § 67a of the Act referred, are rendered voidable, if at all, by § 547 of the Code as preferences.

PART VII

ADVERSARY PROCEEDINGS

Rule 7001

Designation as Adversary Proceeding

1 A proceeding before a bankruptcy judge for legal,
2 equitable, or declaratory relief which arises under non-
3 bankruptcy law is an adversary proceeding governed by Part
4 VII of the Bankruptcy Rules.

Note

This rule supplements the adversary proceeding rules of the Bankruptcy and Chapter Rules and is designed to make it clear that all actions within the expanded jurisdictional grant of 28 U.S.C. §1471 are adversary proceedings.

The adversary proceedings rules of the Bankruptcy and Chapter Rules, which are applicable to cases under the Code, make actions to recover money or property adversary proceedings. Although a very high percentage of the actions which will be brought under the new jurisdictional grant will be to recover money or property, there will be actions within the bankruptcy court's jurisdiction which are not actions to recover money or property. The most important examples are actions for specific performance and certain other equitable remedies and declaratory judgment actions. The all inclusive language of this rule subjects any possible action within the jurisdictional grant to procedures of Part VII of the Bankruptcy Rules.

Rule 7002

Pleading Jurisdiction

1 A pleading which sets forth a claim for relief,
2 whether an original claim, counterclaim, cross-claim, or
3 third-party claim, shall contain a short and plain statement
4 of the grounds on which the court's jurisdiction depends, un-
5 less the court already has jurisdiction and the claim needs
6 no new grounds of jurisdiction to support it. The jurisdic-
7 tional allegation shall also contain a reference to the name,
8 number, and chapter of the case under the Bankruptcy Code to
9 which the adversary proceeding relates and the district and
10 division where the case is pending.

Note

With one important exception, Bankruptcy Rule 708 makes Rule 8 of the Federal Rules of Civil Procedure applicable to adversary proceedings. The requirement of Rule 8(a)(2) that a complaint contain a jurisdictional allegation is the exception to the general incorporation of Rule 8. Because of the expanded jurisdiction of the bankruptcy courts, it is now appropriate to require that complaints initiating adversary proceedings contain an explicit allegation of the grounds of the bankruptcy court's jurisdiction. This rule supplements Bankruptcy Rule 708 by requiring that all complaints and similar pleadings contain an allegation of the bankruptcy court's jurisdiction.

The last sentence of the rule requires that all complaints and similar pleadings state the name, number, and chapter of the case under the Code to which the adversary proceeding relates. This requirement is designed to facilitate handling of the complaints by court personnel and to insure that litigants have a precise reference to the pending case under the Code.

Rule 7003

Caption of Pleadings

1 The caption of each pleading in an adversary pro-
2 ceeding shall conform substantially to Form No. 24, if the
3 adversary proceeding is filed in the court where the case
4 under the Bankruptcy Code is pending, or Form No. 25, if
5 the adversary proceeding is filed in a court other than the
6 court in which the case under the Bankruptcy Code is pending.

Note

Parties initiating adversary proceedings in the bankruptcy courts will sometimes be required or have the option of filing an adversary proceeding in a bankruptcy court other than the one in which the case under the Code is pending. In order to distinguish adversary proceedings which are in the bankruptcy court where the case is pending from those which are not, this rules requires that the caption of an adversary proceeding filed where the case is pending be slightly different from the caption used for adversary proceedings filed in other courts.

The forms are designed to be consistent with the plans of the Administrative Office of United States Courts to require that each adversary proceeding be docketed separately and assigned an adversary proceeding number. Therefore the caption will be completed by filing in the adversary proceeding number. The number of the case under the Code to which the adversary proceeding relates will not appear in the caption, however, Rule 7002 requires that the pertinent information relating to the case under the Code to which the adversary proceeding relates appear in the jurisdictional allegation of the complaint.

Rule 7004

Removal

1 (a) Application.

2 (1) Form and Content. A party desiring to
3 remove any civil action or proceeding from a federal or a
4 state court shall file in the bankruptcy court for the dis-
5 trict and division within which such action is pending a
6 verified application containing a short and plain statement
7 of the facts which entitle him or them to removal together
8 with a copy of all process and pleadings.

9 (2) Time for Filing by Defendant. The appli-
10 cation for removal of a civil action or proceeding shall be
11 filed within 30 days after the receipt by the defendant,
12 through service or otherwise, of a copy of the initial plead-
13 ing setting forth the claim for relief upon which such action
14 or proceeding is based, or within 30 days after the ser-
15 vice of summons upon the defendant if such initial pleading
16 has then been filed in court and is not required to be served
17 on the defendant, whichever period is shorter.

18 (3) Time for Filing by Any Party. If the
19 civil action or proceeding stated by the initial pleading is
20 not within the jurisdiction of the bankruptcy court when

21 initiated, an application for removal may be filed by a party
22 within 30 days after the order for relief in the case under
23 the Bankruptcy Code.

24 (b) Bond. Except where a trustee or debtor in
25 possession in a case under the Bankruptcy Code or the United
26 States is an applicant, each application for removal of a
27 civil action or proceeding shall be accompanied by a bond
28 with good and sufficient surety conditioned that the party
29 will pay all costs and disbursements incurred by reason of the
30 removal proceedings should it be determined that the civil
31 action or proceeding was not removable or was improperly
32 removed.

33 (c) Notice. Promptly after the filing of the ap-
34 plication and bond, when required, the party filing the
35 removal application shall give written notice thereof to all
36 adverse parties and shall file a copy of the application with
37 the clerk of the court from which the civil action or pro-
38 ceeding was removed which shall effect the removal and the
39 parties shall proceed no further in that court unless and
40 until the case is remanded.

41 (d) Procedure After Removal.

42 (1) In all civil actions or proceedings re-
43 moved to a bankruptcy court the bankruptcy court may issue

44 all necessary orders and process to bring before it all
45 proper parties whether served by process issued by the court
46 from which the case was removed or otherwise.

47 (2) The bankruptcy court may require the applicant
48 to file with its clerk copies of all records and proceedings
49 in the court from which the case was removed.

50 (e) Process After Removal. In all civil actions
51 or proceedings removed to a bankruptcy court in which any
52 one or more of the defendants has not been served with pro-
53 cess or in which the service has not been perfected prior to
54 removal, or in which process served proves to be defective,
55 such process or service may be completed or new process
56 issued in the same manner as in cases originally filed in the
57 bankruptcy court. This subdivision shall not deprive any
58 defendant on whom process is served after removal of his
59 right to move to remand the case.

60 (f) Applicability of Part VII of the Rules of
61 Bankruptcy Procedure. The rules of Part VII of the Bank-
62 ruptcy Rules apply to a civil action or proceeding removed
63 to a bankruptcy court from a federal or state court and
64 govern procedure after removal. Repleading is not necessary
65 unless the court so orders. In a removed action in which the
66 defendant has not answered, he shall answer or present the

67 other defenses or objections available to him under the rules
68 of Part VII of the Rules of Bankruptcy Procedure within 20
69 days after the receipt through service or otherwise of a copy
70 of the initial pleading setting forth the claim for relief
71 upon which the action or proceeding is based, or within 20
72 days after the service of summons upon such initial pleading,
73 then filed, or within 5 days after the filing of the appli-
74 cation for removal, whichever period is longest.

75 (g) Time for Filing a Demand for Jury Trial. If
76 at the time of removal all necessary pleadings have been
77 served, a party entitled to trial by jury shall be accorded
78 it, if his demand therefor is served within 10 days after the
79 application for removal is filed if he is the applicant, or
80 if he is not the applicant, within 10 days after service on
81 him of the notice of filing the application. A party who,
82 prior to removal, has made an express demand for trial by
83 jury in accordance with federal or state law, need not make a
84 demand after removal. If state law applicable in the court
85 from which the case is removed does not require the parties
86 to make express demands in order to claim trial by jury, they
87 need not make demands after removal unless the bankruptcy
88 court directs that they do so within a specified time if they
89 desire to claim trial by jury. The bankruptcy court may make
90 this direction on its own motion and shall do so as a matter

91 of course at the request of any party. The failure of a
92 party to make demand as directed constitutes a waiver by him
93 of trial by jury.

94 (h) Record Supplied. Where a party is entitled
95 to copies of the records and proceedings in any civil action
96 or proceeding in a federal or a state court, to be used in a
97 bankruptcy court, and the clerk of such court, on demand, and
98 the payment or tender of the legal fees, fails to deliver
99 certified copies the bankruptcy court may, on affidavit
100 reciting such facts, direct such record to be supplied by
101 affidavit or otherwise. Thereupon such proceedings, trial
102 and judgment may be had in such bankruptcy court, and all
103 such process awarded, as if certified copies had been filed
104 in the bankruptcy court.

105 (i) Attachment or Sequestration; Securities. When-
106 ever any civil action or proceeding is removed to a bankruptcy
107 court, any attachment or sequestration of the goods or estate
108 of the defendant in such action in the court from which the
109 action was removed shall hold the goods or estate to answer
110 the final judgment or decree in the same manner as they would
111 have been held to answer final judgment or decree had it been
112 rendered by the court from which the civil action or proceed-
113 ing was removed. All bonds, undertakings, or security given

114 by either party in a civil action or proceeding prior to its
115 removal shall remain valid and effectual notwithstanding such
116 removal. All injunctions, orders, and other proceedings had
117 in civil action or proceeding prior to its removal shall
118 remain in full force and effect until dissolved or modified
119 by the bankruptcy court.

120 (j) Remand. If at any time before final judgment
121 it appears that the civil action or proceeding was removed
122 improvidently or without jurisdiction, the bankruptcy court
123 shall remand the case, and may order the payment of just
124 costs. A certified copy of the order of remand shall be
125 mailed by its clerk to the clerk of the court from which the
126 civil action or proceeding was removed and that court may
127 thereupon proceed with the case.

128 (k) Definitions. For the purpose of this rule the
129 word "state" includes the District of Columbia and the words
130 "state court" include the Superior Court of the District of
131 Columbia.

Note

Section 1478 of Title 28 authorizes the removal from a state court or a federal court, other than the United States Tax Court, to the bankruptcy court of any civil action or proceeding, other than a suit by a government unit to enforce its police or regulatory power. This rule specifies the procedure for and after removal.

The subdivisions of this rule conform substantially to the sections of the Judicial Code pertaining to removal to the district courts, 28 U.S.C. §§1446-1451, and Rule 81(c) of the Federal Rules of Civil Procedure. Appropriate changes have been made to adapt the language of these sections and the rule to removal to the bankruptcy courts.

Subdivision (a)(1) is derived from 28 U.S.C. §1446(a). Although §1446(a) applies only to defendants, this subdivision applies to any party because removal to a bankruptcy court under 28 U.S.C. §1478 may be properly effectuated by a plaintiff or a defendant.

The word applications is substituted for petition because petition is used in the Bankruptcy Rules to refer to the document initiating a case. In addition, the reference to the court from which the action may be removed is expanded to include federal courts because 28 U.S.C. §1478 authorizes removal from all federal courts except the Tax Court.

Subdivisions (a)(2) and (a)(3) are derived from paragraphs one and two of 28 U.S.C. §1446(b). Timely exercise of the right to remove is as important in the bankruptcy context as it is when the removal is from a state court to a district court. If an action is within the bankruptcy court's jurisdiction when filed, only a defendant may remove. For example, if a trustee elects to sue in the district court or a state court, he has made an election to proceed in that forum and removal is inappropriate.

Both a plaintiff and defendant may remove an action which becomes removable after it is initiated. For example, if a corporation is a plaintiff in an action and that corporation later becomes a debtor under Chapter 7 or 11 of the Code, either the trustee or debtor in possession may remove or the defendant may remove. The thirty-day period for the filing of the removal petition runs from the order for relief in the case. In voluntary cases this date is the date of the petition, but in involuntary cases the date is when the order for relief is entered under §303(h) of the Code.

Subdivision (b): with one exception, this subdivision is the same as 28 U.S.C. §1446(d). The exemption from the bond requirement is enlarged to include a trustee or debtor in possession. Bankruptcy Rule 805 gives the appellate court discretion to require a trustee to post a bond. Complete exemption from the bond requirement for removal is appropriate because of the limited resources which may be

available at the beginning of a case and the very small probability that an action will be improperly removed.

Recovery on the bond is permitted only where the removal was improper. If the removal is proper but the bankruptcy court orders the action remanded on equitable grounds, 28 U.S.C. §1478(b), there is no recovery on the bond.

Subdivision (c) requires that notice of the filing of the application for removal be given to adverse parties. The notice requirements of this subdivision are the same as those found in 28 U.S.C. §1446(e). The injunction aspect of this subdivision differs from §1446(e) in that the subdivision enjoins the parties from further proceeding but the statute enjoins the court from which the case is removed from taking further action. In light of the Congressional policy reflected in §405(a)(1)(A) of P.L. 95-598 it is inappropriate to provide in a local rule that another court is enjoined from acting. Moreover, there is no reason to believe that other courts will not heed the statutory mandate of 28 U.S.C. §1478 when actions are removed to the bankruptcy courts.

Subdivisions (d) and (e), with appropriate changes to conform them to the bankruptcy context, are the same as 28 U.S.C. §1447(a) and (b) and 28 U.S.C. §1448, respectively.

Subdivisions (f) and (g) are taken from Rule 81(c) of the Federal Rules of Civil Procedure. Again, the subdivisions differ from Rule 81(c) only to the extent necessary to conform the language of Rule 81(c) to the bankruptcy context.

Subdivision (h) is derived from 28 U.S.C. §1449 and subdivision (i) is derived from 28 U.S.C. §1450.

Subdivision (j) is derived from 28 U.S.C. §1447(c). Removal is improvident under this subdivision when a court finds there are equitable grounds within 28 U.S.C. §1478(b) justifying remand.

Subdivision (k) is derived from 28 U.S.C. §1451.

No subdivision of this rule is comparable to 28 U.S.C. §1447(c). Under §1447(c) remand orders are not appealable. Section 1478(b) specifically provides that remand orders of bankruptcy judges are not appealable and, therefore, there is no need for this rule to cover that subject.

PART VIII

APPEAL TO DISTRICT COURT OR THREE-JUDGE PANEL

Rule 8001

Applicability of Part VIII of Bankruptcy Rules to Appeals to Three-Judge Panel

1 The rules in Part VIII of the Federal Rules of Bank-
2 ruptcy Procedure apply to appeals to panels of three bankruptcy
3 judges designated pursuant to 28 U.S.C. § 160.

Note

This rule makes Part VIII of the Federal Rules of Bankruptcy Procedure applicable when an appeal is taken to a panel of three bankruptcy judges. Such panels may be established by the circuit council in accordance with 28 U.S.C. § 160.

Rule 8002

Meaning of Words in Part VIII of the Federal Rules of Bankruptcy Procedure Applicable in Chapter 7, 9, 11 and 13 Cases; Definition

1 (a) Meaning of Words. The following words and
2 phrases used in Part VIII of the Federal Rules of Bankruptcy
3 Procedure made applicable in cases filed under the Bankruptcy
4 Code on or after October 1, 1979, have the meanings herein
5 indicated, unless they are inconsistent with the context:

6 (1) "District court" or "court" means "appellate
7 court."

8 (2) "Clerk of the district court" means "clerk of
9 the appellate court."

10 (b) Definition. The words "appellate court" in
11 these rules mean the "district court sitting as an appellate
12 court" or, when appropriate, "a panel of three bankruptcy
13 judges designated under 28 U.S.C. §160."

Note

The meanings of certain of the words and phrases of the Part VIII rules set forth in this rule and rule 1001 conform the rules in Part VIII of the Federal Rules of Bankruptcy Procedure to the Code's changes in the bankruptcy and appellate court systems.

Subdivision (b) defines "appellate court" to mean the district court sitting as an appellate court or a panel of three bankruptcy judges designated under 28 U.S.C. §160.

Appeals directly to the courts of appeals pursuant to 28 U.S.C. §1293(b) are governed by 28 U.S.C. §2107, which requires the notice of appeal to be filed within 30 days, and the Federal Rules of Appellate Procedure.

The clerk of the district court is the clerk of the appellate court when an appeal is to the district court. This rule assumes that within those circuits which elect to use panels of three bankruptcy judges, one or more clerks of the bankruptcy or district courts or the clerk of the court of appeals will be designated a clerk or clerks for the three-judge panels.

Courts of appeals are not included within the definition of appellate court because appeals by agreement directly to the courts of appeals under 28 U.S.C. §1293(b) are governed by the Federal Rules of Appellate Procedure.

Rule 8003

Filing

1 The filing of the notice of appeal and other papers
2 with the bankruptcy judge as required by Rules 801, 802, 806,
3 and 808 of the Federal Rules of Bankruptcy Procedure shall be
4 made by filing them with the clerk of the bankruptcy court,
5 except that the judge may permit the papers to be filed with
6 him, in which event he shall note thereon the filing date and
7 forthwith transmit them to the office of the clerk of the
8 Bankruptcy Court.

Note

This rule accommodates the Rules of Part VIII to the creation of the office of clerk of the Bankruptcy Court.

There is, however, no need to specifically adapt the rules of Part VIII to assign ministerial tasks to the clerk of the bankruptcy court, for example transmitting the record to the clerk of the appellate court, because the bankruptcy judges have that power under Rule 506.

Rule 8004

Leave to Appeal: Interlocutory Orders

1 (a) Application for Leave to Appeal. Leave to
2 appeal under 28 U.S.C. §1334(b) or §1482(b) shall be sought
3 by filing an application for leave with the clerk of the
4 court to which the appeal is addressed within the time
5 provided by Rule 802 for filing a notice of appeal, with
6 proof of service by the applicant in accordance with Rule
7 804. A notice of appeal need not be filed.

8 (b) Content of Application; Answer. The applica-
9 tion shall contain a statement of the facts necessary to an
10 understanding of the questions to be presented by the appeal;
11 a statement of those questions and of the relief sought; a
12 statement of the reasons why in the opinion of the applicant
13 leave to appeal should be granted; and a copy of the order,
14 decree or judgment complained of and of any opinion or memo-
15 randum relating thereto. Within 10 days after service of
16 the application an adverse party may file an answer in oppo-
17 sition. The application and answer shall be submitted with-
18 out oral argument unless otherwise ordered.

19 (c) Leave to Appeal Granted; Filing of Record.
20 If leave to appeal is granted, the record shall be designated
21 and transmitted and the appeal docketed in accordance with

22 Rules 806 and 807. The time fixed by those rules for desig-
23 nating and transmitting the record and docketing the appeal
24 shall run from the date of the order granting leave to appeal.
25 A notice of appeal need not be filed.

26 (d) Appeal Improperly Taken Regarded as an Applica-
27 tion for Leave to Appeal. If a timely notice of appeal is
28 filed where the proper mode of proceeding is by an application
29 for leave to appeal under this rule, the notice of appeal
30 shall be deemed a timely and proper application for leave to
31 appeal. The appellate court may enter an order either grant-
32 ing or denying leave to appeal or directing that an applica-
33 tion for leave to appeal be filed. Unless the appellate
34 court fixes another time in its order directing that an
35 application for leave to appeal be filed, the application
36 shall be filed within 10 days of entry of the appellate
37 court's order.

Note

Subdivisions (a), (b) and (c) are derived from Rule 6 of the Federal Rules of Appellate Procedure. Provision for a permissive appeal procedure is necessitated by 28 U.S.C. §1334(b) and §1482(b) which authorize the district courts and three-judge panels of bankruptcy judges designated under 28 U.S.C. §160 to grant leave to appeal from interlocutory orders. The request for leave to appeal is denominated as an application rather than a petition, the denomination used in the Appellate Rules, because petition is used in the Bankruptcy Rules only to refer to the document initiating a case under the Code.

Subdivision (d) is similar to 28 U.S.C. §2103 which authorizes the Supreme Court to regard improper appeals as petitions for certiorari.

Rule 8005

Copies of Papers When Appeal Taken to a Panel of Three Bankruptcy Judges

1 When an appeal is to a panel of three bankruptcy
2 judges, an original and three copies of all papers shall be
3 filed, but the panel by order may require that additional
4 copies be furnished.

Note

This rule is designed to expedite the consideration of appeals by panels of three bankruptcy judges.

Rule 8006

Finality of Bankruptcy Judge's Judgment or Order

1 Unless a notice of appeal is filed as prescribed
2 by Rules 801 and 802 of the Bankruptcy Rules or Rules 3 and
3 4 of the Federal Rules of Appellate Procedure, the judgment
4 or order of the bankruptcy judge shall become final.

Note

This rule adapts Rule 803 to make it consistent with 28 U.S.C. §1293(b).

Rule 8007

Effect of Appeal by Agreement to the Court of Appeals

1 The filing of a direct appeal by agreement in the
2 court of appeals under 28 U.S.C. §1293(b) shall have the
3 effect of a stipulation of dismissal of any appeal to another
4 appellate court from the same order, judgment or decree. The
5 appeal shall thereafter be dismissed in accordance with Rule
6 802(b).

Note

Two appeals from the same order, judgment, or decree may not be prosecuted simultaneously before the district court or a three judge panel of bankruptcy judges and the court of appeals. The rule recognizes that because the time for the filing of a notice of appeal is 30 days in the court of appeals counsel who originally file an appeal to the district court or three judge appellate panel may thereafter obtain the agreement of the necessary parties to appeal directly to the court of appeals. The rule provides for the automatic dismissal of the original appeal on the filing of the notice of appeal to the court of appeals.

PART IX

GENERAL PROVISIONS

Rule 9001

Jury Trial

1 (a) Demand. Any party may demand a trial by jury
2 of any issue triable of right by a jury by serving upon the
3 other parties a demand therefor in writing at any time after
4 the commencement of the case or proceeding and not later than
5 10 days after the service of the last pleading directed to
6 such issue. The demand may be indorsed on a pleading of the
7 party.

8 (b) Specification of Issues. In his demand a party
9 may specify the issues which he wishes so tried; otherwise he
10 shall be deemed to have demanded trial by jury for all the
11 issues so triable. If he has demanded trial by jury for only
12 some of the issues, any other party within 10 days after
13 service of the demand or such lesser time as the court may
14 order, may serve a demand for trial by jury of any other or
15 all of the issues of fact in the action.

16 (c) Waiver. The failure of a party to serve a
17 demand as required by this rule and to file it as required by
18 Rule 509 constitutes a waiver by him of trial by jury. a

19 demand for trial by jury made as herein provided may not be
20 withdrawn without the consent of the parties.

21 (d) Applicability of Certain of the Federal Rules
22 of Civil Procedure. Rules 47-51 of the Federal Rules of
23 Civil Procedure apply when a jury trial is conducted.

Note

This rule is adapted from Rule 38 of the Federal Rules of Civil Procedure and governs all requests for jury trials. The rule replaces the provisions of Rule 115(b), which are inconsistent with section 1480(b) of the Judicial Code. Whether a party is entitled to a jury trial is determined by 28 U.S.C. §1480.

PART X

UNITED STATES TRUSTEE

Rule X-1001

Applicability of Rules

1 (a) Part X Rules. The rules in Part X apply to
2 cases under the Bankruptcy Code filed in or transferred to the
3 districts specified in § 1501 of the Code.

4 (b) Inapplicability of Rules. Rules 2003 and 2004
5 do not apply in cases under the Bankruptcy Code filed in or
6 transferred to the districts specified in § 1501 of the Code.

Note

Section 1501 of the Code lists the judicial or "pilot" districts in which United States trustees are to be appointed by the Attorney General pursuant to 28 U.S.C. § 581.

The rules in Part X are for use in those districts in connection with the duties and responsibilities of the United States trustees.

The rules are set out in a separate part to facilitate their repeal in the event the United States trustee system is not continued by Congress beyond 1984. See Pub. L. 95-598, § 408(c).

Pursuant to 28 U.S.C. § 586, the United States trustees are under the general supervision of the Attorney General who will probably promulgate rules or directives governing their conduct which, however, must not be inconsistent with the Bankruptcy Rules to be enacted by Congress. The Attorney General's rules or directives when enacted or issued, must also be referred to in the pilot districts.

Subdivision (b) indicates the rules that are not applicable in the pilot districts. Rules X-1003 and X-1004 substitute for Rules 2003 and 2004.

Rule X-1002

Petitions, Lists of Creditors, Schedules and Statements

1 The clerk of the bankruptcy court shall promptly
2 transmit to the United States trustee one copy of the peti-
3 tion commencing a case under the Bankruptcy Code and one copy
4 of the lists of creditors and the schedule of assets and
5 liabilities and statement of financial affairs, if any, and
6 any amendments thereto. Notice of a hearing for an extension
7 of time to file schedules, statements and lists under Rule
8 1007(d) shall be given the United States trustee.

Note

Rule X-1002 requires that a copy of the petition commencing a case under the Bankruptcy Code, whether it is a case under chapter 7, 9, 11, or 13, is to be sent to the United States trustee. 11 U.S.C. §§ 301-303 provide that petitions are to be filed with the bankruptcy court. Nevertheless, the United States trustee should be apprised of the commencement of every case and this is most easily accomplished by providing that office with a copy of the petition. The number of copies required by Rule 1002 to be filed will accommodate Rule X-1002.

The clerk is also to transmit a copy of the lists of creditors and any schedules and statements that are filed. Rule 1007(a) and (b) require a list of the 10 largest creditors and a list of all creditors to be filed. These lists should be transmitted to the United States trustee.

The clerk should transmit the papers specified in this rule forthwith on their filing because the United States trustee requires the information to perform his duties, e.g., appointment of an interim trustee, 11 U.S.C. § 15701, and appointment of a committee of unsecured creditors, 11 U.S.C. § 151102.

Rule X-1003

Meetings of Creditors or
Equity Security Holders

1 (a) Date and Place. The United States trustee
2 shall call a meeting of creditors to be held not less than 20
3 nor more than 40 days after the order for relief. If there is
4 an appeal from or a motion to vacate the order for relief, or
5 if there is a motion to dismiss the case, the United States
6 trustee may set a later time for the meeting. The meeting may
7 be held at a regular place for holding court or at any other
8 place within the district convenient for the parties in
9 interest.

10 (b) Order of Meeting.

11 (1) Meeting of Creditors. The United States
12 trustee or his designee shall preside at the meeting of
13 creditors. The business of the meeting shall include the
14 examination of the debtor and, if appropriate, the election
15 of a trustee or of a creditors' committee.

16 (2) Meeting of Equity Security Holders. If
17 ordered by the court, the United States trustee shall fix a
18 date for a meeting of equity security holders. The United
18a States trustee or his designee shall preside at any such
18b meeting.

19 (3) Right to Vote. A creditor is entitled to vote
20 at a meeting if he has filed a proof of claim at or before the
21 meeting, unless objection is made or unless the proof of claim
22 is insufficient on its face. Notwithstanding objection to the
23 amount or allowability of a claim for the purpose of voting,
24 the court may temporarily allow it for that purpose in an
25 amount as to the court seems proper.

26 (c) Record of Proceeding. Electronic sound record-
27 ing equipment shall be used by the clerk of the bankruptcy
28 court or the United States trustee to record the meeting of
29 creditors or equity security holders.

30 (d) Report to the Court. The United States trustee
31 shall transmit to the court the name and address of any person
32 elected trustee or a member of a creditors' committee. If an
33 election is disputed, the presiding officer shall promptly
34 inform the court in writing of the dispute. Pending disposi-
35 tion of the dispute by the court, the interim trustee shall
36 continue in office. If no application for the resolution of
37 the election dispute is made to the court within 10 days after
38 the date of the creditors meeting, the interim trustee shall
39 serve as trustee.

40 (e) Special Meetings. The United States trustee
41 may call a special meeting of creditors on application or on
42 his own initiative.

43 (f) Final Meeting. The United States trustee may
44 call a final meeting of creditors in every case in which the
45 net proceeds realized exceed $250. The clerk of the bankruptcy
46 court shall mail a summary of the trustee's final account to
47 the creditors with the notice of the meeting, together with a
48 statement of the amount of the claims allowed. The trustee or
49 his designee shall attend the final meeting and shall, if
50 requested, report on the administration of the estate.

Note

This rule imposes on the United States trustee the duty to fix the date for the meeting of creditors required by 11 U.S.C. § 341(a) and, if ordered by the court pursuant to 11 U.S.C. § 341(b), the meeting of equity security holders. Although the United States trustee is to call the meeting, that is, to fix the date, a duty that is parallel to the one imposed on the court by Rule 2003(a), the clerk of the bankruptcy court transmits the notice of the meeting, as prescribed by Rule 2002(a).

As indicated in the rule there is flexibility with regard to the location of the meeting; a courtroom may be made available and that would be an appropriate location. It would be desirable for the meeting to be held in close proximity to a bankruptcy judge should any question or dispute requiring immediate resolution arise.

Pursuant to 11 U.S.C. §§ 702 and 705, creditors may elect a trustee and a committee in a chapter 7 case. Subdivision (b) of this rule provides that the United States trustee or his designee will preside over any election that is held under those sections. While Rule X-1003 is applicable to cases under chapter 11 and chapter 13, trustees and committees are not elected thereunder.

Subdivision (d) recognizes that the court should be informed immediately about the election or nonelection of a trustee in a chapter 7 case. This subdivision also takes note of the fact that there may be a disputed election, but in no event may the United States trustee or his designee resolve the dispute. For purposes of expediency, the results of the election could be obtained for each alternative presented by the dispute and reported to the court. Thus, when an interested party (not the United States trustee) raises the dispute before the court, its resolution will determine the outcome and a new or adjourned meeting to conduct the election may not be necessary.

Rule X-1004

Notification to Trustee of Selection

1 The United States trustee shall immediately notify
2 the trustee of his selection, how he may qualify and, if
3 applicable, the penal sum of his bond. The trustee shall
4 advise the court in writing of his acceptance or rejection
5 of the office within 5 days after receipt of this notice.

Note

See 11 U.S.C. §§ 322, 701(b), 702, 703(a), 15322, 15701 and 15703.

If the person selected as trustee accepts the office, he should qualify within 5 days after his selection, as required by 11 U.S.C. § 322(a).

Rule X-1005

Right to Be Heard; Filing Papers

1 (a) Right to Be Heard. The United States trustee
2 may raise and appear and be heard on any issue relating to
3 his responsibilities in a case under the Bankruptcy Code.

4 (b) Filing of Papers. The court or the United
5 States trustee may require a party in interest to file with
6 the United States trustee a copy of any paper filed with the
7 court if the court or the United States trustee deems it
8 necessary in the interest of effective administration.

Note

Subdivision (a) gives the United States trustee standing to be heard. That office should have the opportunity, for example, to object to actions proposed to be taken by a chapter 7 trustee, or to support any such action. The Code is silent as to the United States trustee's standing. This subdivision gives effect to Congressional intent, i.e., that the United States trustee shall have an active role in cases under title 11, United States Code.

Subdivision (b) enables the United States trustee to be kept aware and current of the developments in a case.

Rule X-1006

Prohibition on Ex Parte Contacts

1 The United States trustee, his assistants, and
2 agents shall refrain from ex parte meetings and communica-
3 tions with the bankruptcy judge concerning matters affecting
4 a particular case or civil proceeding. This rule does not
5 preclude communication with a bankruptcy judge for the purpose
6 of discussing general problems of administration and improve-
7 ment of bankruptcy administration, including operation of the
8 United States trustee system.

Note

This rule should be unnecessary because there should not be ex parte communications with a bankruptcy judge by a trustee in a chapter 7, 11 or 13 case or by any other person. Since the United States trustee is new, however, the rule offers guidance as to the proper conduct of that office. See H. Rep. No. 95-595, 95th Cong., 1st Sess. 95 et seq. (1977). Contacts and relationships exist between the bankruptcy courts and the bar which are problems that the new law seeks to solve. The system should not only operate fairly but it must appear to operate fairly.

Communication with respect to the judicial and administrative system is expressly not prohibited. It may be particularly necessary during the transition period for the court and the United States trustee to cooperatively seek ways to improve the administration of cases under the Code.

See also Rule 5001 which imposes the same prohibitions on a party in interest, anyone representing a party in interest, or employee of a party in interest.

This rule and Rule 5001 do not substitute for or limit any applicable canon of professional responsibility or judicial conduct. See Note to Rule 5001.

PART XIII.
CHAPTER 13 RULE

Rule 13001

Supplement to Chapter 13 Statement

1 (a) Schedule of Exempt Property. The original and
2 each copy of the Chapter 13 Statement shall be accompanied
3 by a statement, prepared in the manner prescribed by Schedule
4 B-4 of Form No. 6, of the exemption law which would be
5 selected and the property which would be claimed as exempt
6 if the debtor's estate were liquidated under chapter 7 of
7 the Bankruptcy Code.

8 (b) Debtor Engaged in Business. The original and
9 each copy of the Chapter 13 Statement of a debtor engaged in
10 business shall be accompanied by a statement of financial
11 affairs for a debtor engaged in business prepared in the
12 manner prescribed by Form No. 8.

Note

Official Form No. 13-5, Chapter XIII Statement, is consistent with the Code and applicable to cases under chapter 13; however, the substantive changes contained in chapter 13 of the Code create the need for information in addition to that contained in a completed chapter 13 Statement.

Section 1325(a)(4) of the Code authorizes confirmation of a chapter 13 plan only if the distributions under the chapter 13 plan are equal to or greater than the distributions which would be available if the estate of the debtor were liquidated under chapter 7. Therefore, the court must know what exemption law the debtor would select and the property he would claim as exempt if there were a chapter 7

liquidation. Completion of the Schedule B-4 of Form No. 6 is a convenient way of providing the court with this necessary information, and, therefore, subdivision (a) requires that the Chapter 13 Statement be accompanied by a completed Schedule B-4.

Subdivision (b) requires a debtor engaged in business to complete and file the chapter 7 statement of affairs of a debtor engaged in business. The information provided in the statement of affairs is necessary to the court and the parties in a chapter 13 case.

Under both subdivisions, the supplemental information must be filed with the Chapter 13 Statement. Rule 13-107 governs the time within which the Chapter 13 Statement must be filed.