

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

ANTHONY J. SCIRICA
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

WILL L. GARWOOD
APPELLATE RULES

A. THOMAS SMALL
BANKRUPTCY RULES

DAVID F. LEVI
CIVIL RULES

W. EUGENE DAVIS
CRIMINAL RULES

MILTON I. SHADUR
EVIDENCE RULES

October 20, 2000

To: The Chief Justice of the United States
Associate Justices of the Supreme Court

From: Judge Anthony J. Scirica

Re: Summary of Proposed Amendments to the Federal Rules

The amendments to the Federal Rules of Practice and Procedure being transmitted from the Judicial Conference are intended to have the consequences summarized below.

CIVIL RULES

Electronic and Other Service

The proposed amendments to Civil Rules 5, 6, and 77 permit service of papers (other than the complaint) and transmission of court notices by electronic means with the recipient's written consent. Electronic service is complete on transmission. A party served electronically is allowed an additional three days to respond, for reasons similar to those that support the present provision allowing an additional three days after service by mail.

Copyright Rules

This proposal abrogates the Copyright Rules of Practice. The Copyright Rules were prescribed by the Supreme Court in 1909 and are set out in 17 U.S.C.A. following § 501. They deal only with prejudgment seizure of copies alleged to infringe a copyright. The rules were written for the 1909 Copyright Act and have not been changed to reflect inconsistent provisions in the 1976 Copyright Act. They do not conform to modern concepts of due process. As a practical matter, most practitioners are unaware of the rules and rely exclusively on the Federal Rules of Civil Procedure, especially on Rule 65 to effect prejudgment seizure. No member of the Copyright bar or any Copyright bar association has expressed opposition to the abrogation.

Amendments to Rule 81 conform to the abrogation of the Copyright Rules, eliminate an outdated reference to mental health proceedings, and clarify a reference to the Bankruptcy Rules.

Technical Conforming Amendment

Rule 82 would be amended to correct a citation to a repealed section of title 28 of the United States Code.

BANKRUPTCY RULES

Under proposed amendments to Rule 1007, a debtor who knows that a creditor is an infant or incompetent person would be required to include in the list of creditors and schedules the name, address, and legal relationship of any representative of that creditor.

The proposed amendments to Rule 2002 would require that a party who is entitled to notice of a plan-confirmation-hearing be given adequate notice of any injunction that would enjoin conduct not otherwise enjoined by the Bankruptcy Code.

Rule 3016 would be amended to require adequate notice of a proposed injunction to entities whose conduct would be enjoined under a plan rather than by the Bankruptcy Code.

The proposed amendment to Rule 3017 would require a court to consider prescribing procedures that would provide adequate notice of an injunction issued under a proposed plan, rather than by operation of the Bankruptcy Code, to entities who are neither creditors nor equity security holders.

Rule 3020 would be amended to require that an order of confirmation describe in reasonable detail the terms, scope, and conditions of an injunction issued under a plan, enjoining conduct not otherwise enjoined by the Bankruptcy Code.

The proposed amendment of Rule 9006(f) would provide a party with an additional three days to respond whenever a copy of a notice or paper is served by electronic means.

The proposed amendments to Rule 9020 would apply the procedures governing contested matters to a motion filed by an United States trustee or a party in interest for an order of contempt. The amendment only sets out a procedure for handling a motion for contempt; it does not address the existence of the power of a bankruptcy court to issue a contempt order.

Rule 9022 would be amended to permit the clerk of court to use electronic means to serve notice of entry of an order or judgment on a party who has consented to such service.

A fuller explanation and background of these proposed rules amendments are contained in the excerpts of the committee's report to the Judicial Conference. The Advisory Committee

chairs and I would be pleased to answer any questions about these proposed changes, and I invite you to contact us if we can be of assistance.

cc: Honorable A. Thomas Small, Chair, Advisory Committee on Bankruptcy Rules
Honorable David F. Levi, Chair, Advisory Committee on Civil Rules