

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

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

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

DATE: December 15, 2003

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on September 18-19, 2003, in Stevenson, Washington. The Committee considered a number of issues and will continue discussion of several matters at its next meeting. The Committee also adopted several proposed amendments to the Bankruptcy Rules and Forms for recommendation to the Standing Committee.

II. Action Items

A. Preliminary Draft of Proposed Amendments to Bankruptcy Rules 5005(c) and 9036

1. Synopsis of Proposed Amendments

A. Rule 5005(c) is amended to include the clerk of the bankruptcy appellate panel among the persons who can transmit erroneously delivered papers to the clerk of the bankruptcy court. Under the existing Rule, the United States trustee, the trustee, the attorney for the trustee, a bankruptcy judge, district judge, and clerk of the district court are authorized to forward erroneously filed papers. The clerk of the bankruptcy appellate panel was not included in the list because those courts were not in place when the rule was originally promulgated. The amendment corrects that omission. The amendment also adds both the clerk of the bankruptcy appellate panel and a district judge to the list of persons who can transmit erroneously filed papers to the United States trustee when that is appropriate. This amendment similarly corrects an omission in the rule.

B. Rule 9036 is amended to delete the current language that requires the sender of an electronic notice to have received confirmation of receipt of that notice for the notice to be complete.

At the time the rule was promulgated, the sender of an electronic communication generally would receive a notification that the recipient of the notice actually received it. For the vast majority of internet service providers, these receipt notifications are no longer given. Moreover, the general level of confidence with electronic communications has increased to the point that it is presumed that these messages are received in the proper course, at least to the extent that other forms of notice (such as by regular mail) also are received. The amendment affirmatively states that the notice is complete upon its transmission. This is consistent with the treatment of notice by regular mail under the Bankruptcy Rules. It is also consistent with Civil Rule 5(b)(2)(B) and (D) that provide that service by mail and by electronic means is complete upon transmission.

The text of the proposed amendments to Bankruptcy Rules 5005(c) and 9036 are set out at the end of this Report.

* * * * *

Attachments: Proposed Amendments to Bankruptcy Rules 5005 and 9036

* * * * *

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

Rule 5005. Filing and Transmittal of Papers

* * * * *

1
2 (c) ERROR IN FILING OR TRANSMITTAL. A paper
3 intended to be filed with the clerk but erroneously delivered
4 to the United States trustee, the trustee, the attorney for the
5 trustee, a bankruptcy judge, a district judge, the clerk of the
6 bankruptcy appellate panel, or the clerk of the district court
7 shall, after the date of its receipt has been noted thereon, be
8 transmitted forthwith to the clerk of the bankruptcy court. A
9 paper intended to be transmitted to the United States trustee
10 but erroneously delivered to the clerk, the trustee, the attorney
11 for the trustee, a bankruptcy judge, a district judge, the clerk
12 of the bankruptcy appellate panel, or the clerk of the district
13 court shall, after the date of its receipt has been noted thereon,
14 be transmitted forthwith to the United States trustee. In the

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

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

15 interest of justice, the court may order that a paper
16 erroneously delivered shall be deemed filed with the clerk or
17 transmitted to the United States trustee as of the date of its
18 original delivery.

COMMITTEE NOTE

The rule is amended to include the clerk of the bankruptcy appellate panel among the list of persons required to transmit to the proper person erroneously filed or transmitted papers. The amendment is necessary because the bankruptcy appellate panels were not in existence at the time of the original promulgation of the rule. The amendment also inserts the district judge on the list of persons required to transmit papers intended for the United States trustee but erroneously sent to another person. The district judge is included in the list of persons who must transmit papers to the clerk of the bankruptcy court in the first part of the rule, and there is no reason to exclude the district judge from the list of persons who must transmit erroneously filed papers to the United States trustee.

Rule 9036. Notice by Electronic Transmission

1 Whenever the clerk or some other person as directed by
2 the court is required to send notice by mail and the entity
3 entitled to receive the notice requests in writing that, instead
4 of notice by mail, all or part of the information required to be

5 contained in the notice be sent by a specified type of
6 electronic transmission, the court may direct the clerk or other
7 person to send the information by such electronic
8 transmission. ~~Notice by electronic transmission is complete,
9 and the sender shall have fully complied with the requirement
10 to send notice, when the sender obtains electronic
11 confirmation that the transmission has been received. Notice
12 by electronic means is complete on transmission.~~

COMMITTEE NOTE

The rule is amended to delete the requirement that the sender of an electronic notice must obtain electronic confirmation that the notice was received. The amendment provides that notice is complete upon transmission. When the rule was first promulgated, confirmation of receipt of electronic notices was commonplace. In the current electronic environment, very few internet service providers offer the confirmation of receipt service. Consequently, compliance with the rule may be impossible, and the rule could discourage the use of electronic noticing.

Confidence in the delivery of email text messages now rivals or exceeds confidence in the delivery of printed materials. Therefore, there is no need for confirmation of receipt of electronic messages just as there is no such requirement for paper notices.

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

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

DATE: May 17, 2004

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

* * * * *

The Advisory Committee also studied a number of proposals to amend the Bankruptcy Rules. After careful consideration, the Advisory Committee resolved to recommend that the Standing Committee approve for publication a preliminary draft of proposed amendments to Bankruptcy Rules 1009, 2002, 4002, 7004, and 9001, and to Schedule I of Official Form 6. The Style Consultants to the Standing Committee offered a number of suggestions that were considered by the Advisory Committee's Style Subcommittee, and the proposals set out below in the Action Items section of the report reflect those joint efforts.

II. Action Items

* * * * *

B. Preliminary Draft of Proposed Amendments to Bankruptcy Rules 1009, 2002, 4002, 7004, and 9001, and Schedule I of Official Form 6.

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

1. Synopsis of Preliminary Draft of Proposed Amendments to Bankruptcy Rules 1009, 2002, 4002, 7004, and 9001, and Schedule I of Official Form 6.

- (a) Rule 1009 is amended to include a provision requiring the debtor to submit a corrected statement of social security number when the debtor becomes aware of an error in a statement of social security number previously submitted to the court.
- (b) Rule 2002(g) is amended by adding a new subdivision (g)(4) that authorizes entities and notice providers to agree on the manner and address to which service may be effected. The amendment is intended to facilitate notices to creditors that operate on a national basis, although the rule allows such agreements by any entity with any notice provider. A related amendment to Rule 9001 defines notice providers.
- (c) Rule 4002 is amended by adding a new subdivision (b) to implement the directives of § 521 of the Bankruptcy Code. The amendment requires that a debtor bring certain documentation to the § 341 meeting of creditors to establish current income and ownership of financial accounts, as well as the debtor's most recently filed federal income tax return.

- (d) Rule 7004 is amended to revise the method of service of a summons and complaint on the attorney for the debtor whenever an entity serves the debtor with a summons and complaint. The amendment makes clear that the debtor's attorney must be served with a copy of any summons and complaint against the debtor without regard to the manner in which the summons and complaint was served on the debtor. Under the current rule, the debtor's attorney must be served only if the summons and complaint was served on the debtor by mail.
- (e) Rule 9001 is amended to add a definition of notice provider to the rule. The definition is to be read in conjunction with the proposed amendment to Rule 2002(g).
- (f) Schedule I of Official Form 6 is amended to require the disclosure of the current income of the non-filing spouse of a debtor.

2. Text of Preliminary Draft of Proposed Amendments to Rules 1009, 2002, 4002, 7004, and 9001, and Schedule I of Official Form 6.

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

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

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* * * * *

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

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

2 (c) STATEMENT OF SOCIAL SECURITY NUMBER.

3 If a debtor becomes aware that the statement of social security
4 number submitted under Rule 1007(f) is incorrect, the debtor shall
5 promptly submit a verified amended statement setting forth the
6 correct social security number. The debtor shall give notice of the
7 amendment to all the entities required to be included on the list
8 filed under Rule 1007(a)(1) or (a)(2).

9 ~~(c)~~(d) TRANSMISSION TO UNITED STATES
10 TRUSTEE. The clerk shall ~~forthwith~~ promptly transmit to the
11 United States trustee a copy of every amendment filed or
12 submitted under ~~pursuant to~~ subdivision (a), (b), or (c) ~~or (b)~~ of
13 this rule.

COMMITTEE NOTE

Rule 2002(a)(1) requires that the notice of the § 341 meeting of creditors include the debtor's social security number. It provides creditors with the full number while limiting publication of the social security number otherwise to the final four digits of the number to protect the debtor's identity from others who do not have the same need for that information.

If, however, the social security number that the debtor submitted under Rule 1007(f) is incorrect, then the only notice to the entities contained on the list filed under Rule 1007(a)(1) or (a)(2) would be incorrect. This amendment adds a new subdivision (c) that directs the debtor to submit a verified amended statement of social security number and to give notice of the new statement to all entities in the case who received the notice containing the erroneous social security number.

Former subdivision (c) becomes subdivision (d) and is amended to include new subdivision (c) amendments in the list of documents that the clerk must transmit to the United States trustee. Other amendments are stylistic.

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

1

* * * * *

2

(g) ADDRESSING NOTICES.

3

(1) Notices required to be mailed under Rule 2002 to a

4

creditor, indenture trustee, or equity security holder shall be

5

addressed as such entity or an authorized agent has directed in its

6

last request filed in the particular case. For the purposes of this

** The amendment to Rule 9001 should be considered in tandem with the proposed amendment to Rule 2002. Rule 9001 as proposed to be amended is set out at the end of this section of the report.

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

7 subdivision –

8 (A) a proof of claim filed by a creditor or indenture
9 trustee that designates a mailing address constitutes a filed request
10 to mail notices to that address, unless a notice of no dividend has
11 been given under Rule 2002(e) and a later notice of possible
12 dividend under Rule 3002(c)(5) has not been given; and

13 (B) a proof of interest filed by an equity security
14 holder that designates a mailing address constitutes a filed request
15 to mail notices to that address.

16 (2) If a creditor or indenture trustee has not filed a request
17 designating a mailing address under Rule 2002(g)(1), the notices
18 shall be mailed to the address shown on the list of creditors or
19 schedule of liabilities, whichever is filed later. If an equity security
20 holder has not filed a request designating a mailing address under
21 Rule 2002(g)(1), the notices shall be mailed to the address shown
22 on the list of equity security holders.

23 (3) If a list or schedule filed under Rule 1007 includes the
24 name and address of a legal representative of an infant or
25 incompetent person, and a person other than that representative
26 files a request or proof of claim designating a name and mailing
27 address that differs from the name and address of the
28 representative included in the list or schedule, unless the court
29 orders otherwise, notices under Rule 2002 shall be mailed to the
30 representative included in the list or schedules and to the name
31 and address designated in the request or proof of claim.

32 (4) Notwithstanding Rule 2002(g) (1) - (3), an entity and
33 a notice provider may agree that when the notice provider is
34 directed by the court to give a notice, the notice provider shall
35 give the notice to the entity in the manner agreed to and at the
36 address or addresses the entity supplies to the notice provider.
37 That address is conclusively presumed to be a proper address for
38 the notice. The notice provider's failure to use the supplied

39 address does not invalidate any notice that is otherwise effective
40 under applicable law.

41 * * * * *

COMMITTEE NOTE

A new paragraph (g)(4) is inserted in the rule. The new paragraph authorizes an entity and a notice provider to agree that the notice provider will give notices to the entity at the address or addresses set out in their agreement. Rule 9001(9) sets out the definition of a notice provider.

The business of many entities is national in scope, and technology currently exists to direct the transmission of notice (both electronically and in paper form) to those entities in an accurate and much more efficient manner than by sending individual notices to the same creditor by separate mailings. The rule authorizes an entity and a notice provider to determine the manner of the service as well as to set the address or addresses to which the notices must be sent. For example, they could agree that all notices sent by the notice provider to the entity must be sent to a single, nationwide electronic or postal address. They could also establish local or regional addresses to which notices would be sent in matters pending in specific districts. Since the entity and notice provider also can agree on the date of the commencement of service under the agreement, there is no need to set a date in the rule after which notices would have to be sent to the address or addresses that the entity establishes. Furthermore, since the entity supplies the address to the notice provider, use of that address is conclusively presumed to be proper. Nonetheless, if that address is not used, the notice still may be effective if the notice is otherwise effective under applicable law. This is the same treatment given under Rule

5003(e) to notices sent to governmental units at addresses other than those set out in that register of addresses.

The remaining subdivisions of Rule 2002(g) continue to govern the addressing of a notice that is not sent pursuant to an agreement described in Rule 2002(g)(4).

Rule 4002. Duties of Debtor

1 (a) GENERAL DUTIES. In addition to performing other
2 duties prescribed by the Code and rules, the debtor shall:

3 (1) attend and submit to an examination at the times
4 ordered by the court;

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

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

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

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

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

19 (1) Personal Identification. Every individual debtor
20 shall bring to the meeting of creditors under § 341 a picture
21 identification issued by a governmental unit and evidence of social
22 security number(s), or provide a written statement that such
23 documentation does not exist or is not in the debtor's possession;

24 (2) Financial Information. Unless the trustee, the
25 United States trustee, or the bankruptcy administrator instructs
26 otherwise, every individual debtor shall bring to the meeting of
27 creditors under § 341 and make available to the trustee the
28 following documents or copies of them, or provide a written

29 statement that the documentation does not exist or is not in the
30 debtor's possession:

31 (A) evidence of current income, such as the most
32 recent pay stub;

33 (B) the debtor's most recently filed federal income tax
34 return, including any attachments; and

35 (C) statements for each of the debtor's depository
36 and investment accounts, including checking, savings, and money
37 market accounts, mutual funds and brokerage accounts for the
38 time period that includes the date of the filing of the petition.

COMMITTEE NOTE

The rule is amended to implement the directives of § 521 (3) and (4) of the Code that the debtor cooperate with the trustee to permit the trustee to perform the trustee's duties and to provide the trustee with materials and documents as necessary to the administration of the estate or to determine if the debtor is entitled to a discharge. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521. The rule does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the meeting of creditors under § 341 the documents which the debtor

possesses. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials would not be made available to any other party in interest at the § 341 meeting of creditors. Some of the documents may contain otherwise private information that should not be disseminated. For example, the debtor's tax return may include social security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.

Rule 7004. Process; Service of Summons, Complaint

1

* * * * *

2

(b) SERVICE BY FIRST CLASS MAIL.

3

* * * * *

4

(9) Upon the debtor, after a petition has been filed by or

5

served upon the debtor and until the case is dismissed or closed,

6

by mailing a copy of the summons and complaint to the debtor at

7

the address shown in the petition or statement of affairs or to such

8 other address as the debtor may designate in a filed writing ~~and,~~
9 ~~if the debtor is represented by an attorney, to the attorney at the~~
10 ~~attorney's post-office address.~~

11 * * * * *

12 (g) ~~[Abrogated]~~ SERVICE ON DEBTOR'S ATTORNEY.

13 If the debtor is represented by an attorney, whenever service is
14 made upon the debtor under this Rule, service shall also be made
15 upon the debtor's attorney by any means authorized under Rule
16 5(b) F. R. Civ. P.

17 * * * * *

COMMITTEE NOTE

Under current Rule 7004, an entity may serve a summons and complaint upon the debtor by personal service or by mail. If the entity chooses to serve the debtor by mail, it must also serve a copy of the summons and complaint on the debtor's attorney by mail. If the entity effects personal service on the debtor, there is no requirement that the debtor's attorney also be served.

The rule is amended to require service on the debtor's attorney whenever the debtor is served with a summons and complaint. The

amendment makes this change by deleting that portion of Rule 7004(b)(9) that requires service on the debtor’s attorney when the debtor is served by mail, and relocates the obligation to serve the debtor’s attorney into new subdivision (g). Service on the debtor’s attorney is not limited to mail service, but may be accomplished by any means permitted under Rule 5(b) F. R. Civ. P.

Rule 9001. General Definitions

1 * * * * *

2 (9) “Notice provider” means any entity approved by the
3 Administrative Office of the United States Courts to give notice
4 to creditors under Rule 2002(g)(4).

5 (10) (9) “Regular associate” means any attorney regularly
6 employed by, associated with, or counsel to an individual or
7 firm.

8 (11) (10) “Trustee” includes a debtor in possession in a
9 chapter 11 case.

10 (12) (11) “United States trustee” includes an assistant
11 United States trustee and any designee of the United States
12 trustee.

COMMITTEE NOTE

The rule is amended to add the definition of a notice provider and to renumber the final three definitions in the rule. A notice provider is an entity approved by the Administrative Office of the United States Courts to enter into agreements with entities to give notice to those entities in the form and manner agreed to by those parties. The new definition supports the amendment to Rule 2002(g)(4) that authorizes a notice provider to give notices under Rule 2002.

Many entities conduct business on a national scale and receive vast numbers of notices in bankruptcy cases throughout the country. Those entities can agree with a notice provider to receive their notices in a form and at an address or addresses that the creditor and notice provider agree upon. There are processes currently in use that provide substantial assurance that notices are not misdirected. Any notice provider would have to demonstrate to the Administrative Office of the United States Courts that it could provide the service in a manner that ensures the proper delivery of notice to creditors. Once the Administrative Office of the United States Courts approves the notice provider to enter into agreements with creditors, the notice provider and other entities can establish the relationship that will govern the delivery of notices in cases as provided in Rule 2002(g)(4).

Schedule I of Official Form 6 is attached to the end of this Report.

* * * * *

ATTACHMENTS:

* * * * *

Schedule I of Official Form 6

* * * * *

In re _____,
Debtor

Case No. _____
(if known)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 7, 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP	AGE
Employment:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

Income: (Estimate of average monthly income)
Current monthly gross wages, salary, and commissions
(pro rate if not paid monthly.)
Estimated monthly overtime

DEBTOR	SPOUSE
\$ _____	\$ _____
\$ _____	\$ _____

SUBTOTAL

\$ _____	\$ _____
----------	----------

LESS PAYROLL DEDUCTIONS

- a. Payroll taxes and social security
- b. Insurance
- c. Union dues
- d. Other (Specify: _____)

\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____

SUBTOTAL OF PAYROLL DEDUCTIONS

\$ _____	\$ _____
----------	----------

TOTAL NET MONTHLY TAKE HOME PAY

\$ _____	\$ _____
----------	----------

Regular income from operation of business or profession or farm
(attach detailed statement)
Income from real property
Interest and dividends
Alimony, maintenance or support payments payable to the debtor for the
debtor's use or that of dependents listed above.
Social security or other government assistance
(Specify) _____
Pension or retirement income
Other monthly income
(Specify) _____

\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____

TOTAL MONTHLY INCOME

\$ _____	\$ _____
----------	----------

TOTAL COMBINED MONTHLY INCOME \$ _____

(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

2005 COMMITTEE NOTE

Schedule I (Current Income of Individual Debtor(s)) is amended to require a married debtor filing under chapter 7 of the Code to complete the column labeled "Spouse" whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. This information may be relevant to § 707(b) of the Code or other financial determinations. The relevance of this information to § 707(b) or other determinations is a matter of substantive law and is beyond the scope of these rules.