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AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AS ADOPTED BY THE COURT, PURSUANT TO 28 U.S.C. 2075

APRIL 29, 1999.—Referred to the Committee on the Judiciary and ordered to be printed

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

CHAMBERS OF
THE CHIEF JUSTICE

April 26, 1999

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

Dear Mr. Speaker:

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

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

Sincerely,

William H. Rehnquist

SUPREME COURT OF THE UNITED STATES

April 26, 1999

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 1017, 1019, 2002, 2003, 3020, 3021, 4001, 4004, 4007, 6004, 6006, 7001, 7004, 7062, 9006, and 9014.

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

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 1999, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

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

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 1017. Dismissal or Conversion of Case; Suspension

(a) VOLUNTARY DISMISSAL; DISMISSAL FOR WANT OF PROSECUTION OR OTHER CAUSE. Except as provided in §§ 707(a)(3), 707(b), 1208(b), and 1307(b) of the Code, and in Rule 1017(b), (c), and (e), a case shall not be dismissed on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties, before a hearing on notice as provided in Rule 2002. For the purpose of the notice, the debtor shall file a list of creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the debtor or another entity to prepare and file it.

(b) DISMISSAL FOR FAILURE TO PAY FILING FEE.

(1) If any installment of the filing fee has not been paid, the court may, after a hearing on notice to the debtor and the trustee, dismiss the case.

(2) If the case is dismissed or closed without full payment of the filing fee, the installments collected shall be distributed in the same manner and proportions as if the filing fee had been paid in full.

(c) DISMISSAL OF VOLUNTARY CHAPTER 7 OR CHAPTER 13 CASE FOR FAILURE TO TIMELY FILE LIST OF CREDITORS, SCHEDULES, AND STATEMENT OF FINANCIAL AFFAIRS. The court may dismiss a voluntary chapter 7 or chapter 13 case under

§ 707(a)(3) or § 1307(c)(9) after a hearing on notice served by the United States trustee on the debtor, the trustee, and any other entities as the court directs.

(d) SUSPENSION. The court shall not dismiss a case or suspend proceedings under § 305 before a hearing on notice as provided in Rule 2002(a).

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

(1) A motion to dismiss a case for substantial abuse may be filed by the United

States trustee only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, before the time has expired, the court for cause extends the time for filing the motion. The United States trustee shall set forth in the motion all matters to be submitted to the court for its consideration at the hearing.

(2) If the hearing is set on the court's own motion, notice of the hearing shall be served on the debtor no later than 60 days after the first date set for the meeting of creditors under § 341(a). The notice shall set forth all matters to be considered by the court at the hearing.

(f) PROCEDURE FOR DISMISSAL, CONVERSION, OR SUSPENSION.

(1) Rule 9014 governs a proceeding to dismiss or suspend a case, or to convert a case to another chapter, except under §§ 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b).

(2) Conversion or dismissal under §§ 706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and served as required by Rule 9013.

(3) A chapter 12 or chapter 13 case shall be converted without court order when the debtor files a notice of conversion under §§ 1208(a) or 1307(a). The filing date of the notice becomes the date of the conversion order for the purposes of applying § 348(c) and Rule

1019. The clerk shall promptly transmit a copy of the notice to the United States trustee.

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

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

(1) FILING OF LISTS, INVENTORIES, SCHEDULES, STATEMENTS.

* * * * *

(B) If a statement of intention is required, it shall be filed within 30 days after entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier. The court may grant an extension of time for

cause only on written motion filed, or oral request made during a hearing, before the time has expired. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

* * * * *

(6) POSTPETITION CLAIMS; PRECONVERSION ADMINISTRATIVE EXPENSES; NOTICE. A request for payment of an administrative expense incurred before conversion of the case is timely filed under § 503(a) of the Code if it is filed before conversion or a time fixed by the court. If the request is filed by a governmental unit, it is timely if it is filed before conversion or within

the later of a time fixed by the court or 180 days after the date of the conversion. A claim of a kind specified in § 348(d) may be filed in accordance with Rules 3001(a)-(d) and 3002. Upon the filing of the schedule of unpaid debts incurred after commencement of the case and before conversion, the clerk, or some other person as the court may direct, shall give notice to those entities listed on the schedule of the time for filing a request for payment of an administrative expense and, unless a notice of insufficient assets to pay a dividend is mailed in accordance with Rule 2002(e), the time for filing a claim of a kind specified in § 348(d).

* * * * *

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

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

(1) the meeting of creditors under § 341 or § 1104(b) of the Code;

* * * * *

(4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion

of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for failure to pay the filing fee;

* * * * *

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

* * * * *

(2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under § 305;

* * * * *

Rule 2003. Meeting of Creditors or Equity Security Holders

* * * * *

(d) REPORT OF ELECTION AND RESOLUTION OF DISPUTES IN A CHAPTER 7 CASE.

(1) *Report of Undisputed Election.* In a chapter 7 case, if the election of a trustee or a member of a creditors' committee is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the person or entity elected and a statement that the election is undisputed.

(2) *Disputed Election.* If the election is disputed, the United States trustee shall promptly file a report stating that the election

is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. No later than the date on which the report is filed, the United States trustee shall mail a copy of the report to any party in interest that has made a request to receive a copy of the report. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. Unless a motion for the resolution of the dispute is filed no later than 10 days after the United States trustee files a report of a disputed election for trustee, the interim trustee shall serve as trustee in the case.

* * * * *

Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

* * * * *

(e) STAY OF CONFIRMATION ORDER. An order confirming a plan is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

Rule 3021. Distribution Under Plan

Except as provided in Rule 3020(e), after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims under Rule 3003(c)(5) that have been allowed. For purposes of this rule, creditors include holders of bonds, debentures, notes, and other debt securities,

and interest holders include the holders of stock and other equity securities, of record at the time of commencement of distribution, unless a different time is fixed by the plan or the order confirming the plan.

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

(a) RELIEF FROM STAY; PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY.

* * * * *

(3) STAY OF ORDER. An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the

expiration of 10 days after the entry of the order, unless the court orders otherwise.

* * * * *

Rule 4004. Grant or Denial of Discharge

(a) TIME FOR FILING COMPLAINT OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED. In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 reorganization case, the complaint shall be filed no later than the first date set for the hearing on confirmation. At least 25 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k), and to the trustee and the trustee's attorney.

(b) EXTENSION OF TIME. On motion of any party in interest, after hearing on notice, the court may for cause extend the time to file a complaint objecting to discharge. The motion shall be filed before the time has expired.

* * * * *

Rule 4007. Determination of Dischargeability of a Debt

* * * * *

(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, OR CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. A complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of

the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

(d) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under § 523(c) and shall give no less than 30 days' notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed

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

* * * * *

Rule 6004. Use, Sale, or Lease of Property

* * * * *

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

Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease

* * * * *

(d) STAY OF ORDER AUTHORIZING ASSIGNMENT. An order authorizing the trustee to

assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;

(2) a proceeding to determine the validity, priority, or extent of a lien or other

interest in property, other than a proceeding under Rule 4003(d);

(3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property;

(4) a proceeding to object to or revoke a discharge;

(5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;

(6) a proceeding to determine the dischargeability of a debt;

(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

(8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;

(9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or

(10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

Rule 7004. Process; Service of Summons, Complaint

* * * * *

(e) SUMMONS: TIME LIMIT FOR SERVICE WITHIN THE UNITED STATES. Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F.R.Civ.P. shall be by delivery of the summons and complaint within 10 days after the summons is issued. If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days after the summons is issued. If a summons is not timely delivered or mailed, another summons shall be issued and served. This subdivision does not apply to service in a foreign country.

* * * * *

Rule 7062. Stay of Proceedings to Enforce a Judgment

Rule 62 F.R.Civ.P. applies in adversary proceedings.

Rule 9006. Time

* * * * *

(b) ENLARGEMENT.

* * * * *

(2) ENLARGEMENT NOT PERMITTED. The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.

* * * * *

Rule 9014. Contested Matters

In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to a motion. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, and, unless the court otherwise directs, the following rules shall apply: 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027

for the taking of a deposition before an adversary proceeding. The clerk shall give notice to the parties of the entry of any order directing that additional rules of Part VII are applicable or that certain of the rules of Part VII are not applicable. The notice shall be given within such time as is necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order.

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

ALICEMARIE H. STOTLER
CHAIR

PETER G. McCABE
SECRETARY

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FERN M. SMITH
EVIDENCE RULES

TO: **Honorable Alicemarie H. Stotler, Chair**
Standing Committee on Rules of Practice and Procedure

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

DATE: **May 11, 1998**

RE: **Report of the Advisory Committee on Bankruptcy Rules**

Introduction

The Advisory Committee on Bankruptcy Rules met on March 26-27, 1998, at the Winrock International Conference Center in Morrilton, Arkansas. The Advisory Committee considered public comments regarding proposed amendments to 16 Bankruptcy Rules that were published in August 1997, and, after making certain revisions, approved the proposed amendments for presentation to the Standing Committee for final approval and transmission to the Judicial Conference.

* * * * *

The Standing Committee has requested that the Advisory Committee consider certain questions relating to attorney conduct, local rules, electronic submission of public comments, and the rules promulgation timetable. The Advisory Committee's responses regarding these issues are discussed as "Information Items" in this report.

I. Action Items

A. Proposed Amendments to Bankruptcy Rules 1017, 1019, 2002, 2003, 3020, 3021, 4001, 4004, 4007, 6004, 6006, 7001, 7004, 7062, 9006, and 9014, Submitted for Final Approval by the Standing Committee and Transmittal to the Judicial Conference.

1. *Public Comment.*

The Preliminary Draft of the Proposed Amendments to the Federal Rules of Bankruptcy Procedure and related committee notes were published for comment by the bench and bar in August 1997.

The public hearing scheduled for January 30, 1998, was canceled for lack of witnesses, but the Advisory Committee received letters from 18 commentators. One commentator, Jack E. Horsley, Esq., of Illinois, commented generally that he favors all the proposed amendments. The other 17 commentators offered specific comments or suggestions relating to one or more of the published amendments. These letters are summarized on a rule-by-rule basis following the text of each rule in the GAP Report (see pages 6-37 below). These comments and recommendations were reviewed at the Advisory Committee meeting in Arkansas and, as a result, several revisions were made to the published draft. These post-publication revisions are identified in the GAP Report.

2. *Synopsis of Proposed Amendments:*

(a) Rule 1017 is amended to specify the parties entitled to notice of a United States trustee's motion to dismiss a voluntary chapter 7 or chapter 13 case based on the debtor's failure to file a list of creditors, schedules, and statement of financial affairs. Currently, all creditors are entitled to notice of a hearing on the motion if it is a chapter 7 case. To avoid the expense of sending notice to all creditors, the proposed amendments provide that the debtor, the trustee, and any other entities specified by the court, are the only parties entitled to notice. The rule is amended further to provide that a motion to suspend all proceedings in a case or to dismiss a case for substantial abuse of chapter 7 is governed by Rule 9014. Other amendments are stylistic or designed to delete redundant provisions that are covered by other rules.

(b) Rule 1019 is amended (1) to clarify that a motion for an extension of time to file a statement of intention regarding collateral must be filed or made orally before the time expires; (2) to provide that the holder of a postpetition, preconversion administrative expense claim is required to file a request for payment under § 503(a) of the Code, rather than a proof of claim under Rule 3002; (3) to provide that the court may fix a time for filing preconversion administrative expense claims; and (4) to conform the rule to the 1994 amendment to § 502(b)(9) and to the 1996 amendment to Rule 3002(c)(1) regarding the 180-day period for filing a claim of a governmental unit. Other amendments are stylistic.

(c) Rule 2002(a)(4) is amended to delete the requirement that notice of a hearing on dismissal of a chapter 7 case based on the debtor's failure to file required lists,

schedules, and statements, must be sent to all creditors. This amendment conforms to the proposed amendments to Rule 1017 which requires that the notice be sent only to certain parties. This subdivision is amended further to delete the requirement that notice of a hearing on dismissal of a case based on the debtor's failure to pay the filing fee must be sent to all creditors. Rule 2002(f) is amended to provide for notice of the suspension of proceedings under § 305 of the Code.

(d) Rule 2003(d) is amended to require the United States trustee to mail a copy of the report of a disputed election for a chapter 7 trustee to any party in interest that has requested a copy of it. Also, the amended rule gives a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute. These amendments and other stylistic revisions are designed to conform to the 1997 amendments to Rule 2007.1(b)(3) on the election of a trustee in a chapter 11 case.

(e) Rule 3020(e) is added to automatically stay for ten days an order confirming a chapter 9 or chapter 11 plan so that parties will have sufficient time to request a stay pending appeal.

(f) Rule 3021 is amended to conform to the amendments to Rule 3020 regarding the ten-day stay of an order confirming a plan in a chapter 9 or chapter 11 case. The other amendments are stylistic.

(g) Rule 4001(a)(3) is added to automatically stay for ten days an order granting relief from an automatic stay so that parties will have sufficient time to request a stay pending appeal.

(h) Rule 4004(a) is amended to clarify that the deadline for filing a complaint objecting to discharge under § 727(a) is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. Rule 4004(b) is amended to clarify that a motion for an extension of time for filing a complaint objecting to discharge must be filed before the time has expired. Other amendments are stylistic.

(i) Rule 4007 is amended to clarify that the deadline for filing a complaint to determine dischargeability of a debt under § 523(c) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. This rule is amended further to clarify that a motion for an extension of time for filing a complaint must be filed before the time has expired. Other amendments are stylistic.

(j) Rule 6004(g) is added to automatically stay for ten days an order authorizing the use, sale, or lease of property, other than cash collateral, so that parties will have sufficient time to request a stay pending appeal.

(k) Rule 6006(d) is added to automatically stay for ten days an order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) so that parties will have sufficient time to request a stay pending appeal.

(l) Rule 7001 is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief when the relief is provided for in a chapter 9, chapter 11, chapter 12, or chapter 13 plan. Other amendments are stylistic.

(m) Rule 7004(e) is amended to provide that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.

(n) Rule 7062 is amended to delete the additional exceptions to Rule 62(a) F.R. Civ. P. The deletion of these exceptions — which are orders issued in contested matters rather than adversary proceedings — is consistent with the amendment to Rule 9014 that renders Rule 7062 inapplicable to contested matters. For proposed amendments that provide a new automatic ten-day stay of certain orders, see the amendments to Rules 3020, 3021, 4001, 6004, and 6006.

(o) Rule 9006(b)(2) is amended to conform to the abrogation of Rule 1017(b)(3).

(p) Rule 9014 is amended to delete Rule 7062 from the list of Part VII rules that automatically apply in a contested matter. Rule 7062, which provides that Rule 62 F.R.Civ.P. is applicable in adversary proceedings, is not appropriate for most orders granting or denying motions governed by Rule 9014. For proposed amendments that provide a new automatic ten-day stay of certain orders so that parties will have sufficient time to obtain a stay pending appeal, see the amendments to Rules 3020, 3021, 4001, 6004, and 6006.

3. *Text of Proposed Amendments Presented to the Standing Committee for Approval and Transmission to the Judicial Conference, GAP Report, and Summaries of Public Comments on Published Draft:*

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1017. Dismissal or Conversion of Case; Suspension

1 (a) VOLUNTARY DISMISSAL; DISMISSAL
2 FOR WANT OF PROSECUTION OR OTHER CAUSE.
3 Except as provided in §§ 707(a)(3), 707(b), 1208(b), and
4 1307(b) of the Code, and in Rule 1017(b), (c), and (e), a case
5 shall not be dismissed on motion of the petitioner, ~~or~~ for want
6 of prosecution or other cause, or by consent of the parties,
7 before ~~prior to~~ a hearing on notice as provided in Rule 2002.
8 For ~~such~~ the purpose of the notice, the debtor shall file a list
9 of ~~all~~ creditors with their addresses within the time fixed by
10 the court unless the list was previously filed. If the debtor
11 fails to file the list, the court may order the debtor or another
12 entity to prepare and file it ~~the preparing and filing by the~~
13 ~~debtor or other entity~~.

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

14 (b) DISMISSAL FOR FAILURE TO PAY
15 FILING FEE.
16 (1) ~~For failure to pay any installment of~~
17 ~~the filing fee,~~ If any installment of the filing fee has
18 not been paid, the court may, after a hearing on notice
19 to the debtor and the trustee, dismiss the case.
20 (2) If the case is dismissed or ~~the case~~
21 closed without full payment of the filing fee, the
22 installments collected shall be distributed in the same
23 manner and proportions as if the filing fee had been
24 paid in full.
25 ~~(3) Notice of dismissal for failure to pay~~
26 ~~the filing fee shall be given within 30 days after the~~
27 ~~dismissal to creditors appearing on the list of creditors~~
28 ~~and to those who have filed claims, in the manner~~
29 ~~provided in Rule 2002.~~

3 FEDERAL RULES OF BANKRUPTCY PROCEDURE

30 (c) DISMISSAL OF VOLUNTARY CHAPTER
31 7 OR CHAPTER 13 CASE FOR FAILURE TO TIMELY
32 FILE LIST OF CREDITORS, SCHEDULES, AND
33 STATEMENT OF FINANCIAL AFFAIRS. The court may
34 dismiss a voluntary chapter 7 or chapter 13 case under
35 § 707(a)(3) or § 1307(c)(9) after a hearing on notice served by
36 the United States trustee on the debtor, the trustee, and any
37 other entities as the court directs.

38 ~~(c)~~ (d) SUSPENSION. The court shall not dismiss a
39 case or suspend proceedings under § 305 before ~~A case shall~~
40 ~~not be dismissed or proceedings suspended pursuant to § 305~~
41 ~~of the Code prior to~~ a hearing on notice as provided in Rule
42 2002(a).

43 ~~(d) PROCEDURE FOR DISMISSAL OR~~
44 ~~CONVERSION. A proceeding to dismiss a case or convert a~~
45 ~~case to another chapter, except pursuant to §§706(a), 707(b),~~
46 ~~1112(a), 1208(a) or (b), or 1307(a) or (b) of the Code, is~~

47 ~~governed by Rule 9014. Conversion or dismissal pursuant to~~
48 ~~§§706(a), 1112(a), 1208(b), or 1307(b) shall be on motion~~
49 ~~filed and served as required by Rule 9013. A chapter 12 or~~
50 ~~chapter 13 case shall be converted without court order on the~~
51 ~~filing by the debtor of a notice of conversion pursuant to~~
52 ~~§§1208(a) or 1307(a), and the filing date of the notice shall be~~
53 ~~deemed the date of the conversion order for the purposes of~~
54 ~~applying §348(c) of the Code and Rule 1019. The clerk shall~~
55 ~~forthwith transmit to the United States trustee a copy of the~~
56 ~~notice.~~
57 (e) DISMISSAL OF AN INDIVIDUAL
58 DEBTOR'S CHAPTER 7 CASE FOR SUBSTANTIAL
59 ABUSE. The court may dismiss an ~~An~~ individual debtor's
60 case ~~may be dismissed~~ for substantial abuse ~~pursuant to~~ under
61 § 707(b) only on motion by the United States trustee or on the
62 court's own motion and after a hearing on notice to the

63 debtor, the trustee, the United States trustee, and ~~such~~ any

64 other ~~parties in interest~~ entities as the court directs.

65 (1) A motion to dismiss a case for

66 substantial abuse may be filed by the United States

67 trustee ~~shall be filed not later than~~ only within 60 days

68 ~~following~~ after the first date set for the meeting of

69 creditors ~~held pursuant to~~ under § 341(a), unless,

70 before the ~~such~~ time has expired, the court for cause

71 extends the time for filing the motion. ~~The motion~~

72 ~~shall advise the debtor of~~ The United States trustee

73 shall set forth in the motion all matters to be

74 submitted to the court for its consideration at the

75 hearing.

76 (2) If the hearing is set on the court's own

77 motion, notice ~~thereof~~ of the hearing shall be served

78 on the debtor ~~not~~ no later than 60 days ~~following~~ after

79 the first date set for the meeting of creditors ~~pursuant~~

80 ~~to~~ under § 341(a). The notice shall ~~advise the debtor~~
81 ~~of~~ set forth all matters to be considered by the court
82 at the hearing.
83 (f) PROCEDURE FOR DISMISSAL,
84 CONVERSION, OR SUSPENSION.
85 (1) Rule 9014 governs a proceeding to
86 dismiss or suspend a case, or to convert a case to
87 another chapter, except under §§ 706(a), 1112(a),
88 1208(a) or (b), or 1307(a) or (b).
89 (2) Conversion or dismissal under
90 §§ 706(a), 1112(a), 1208(b), or 1307(b) shall be on
91 motion filed and served as required by Rule 9013.
92 (3) A chapter 12 or chapter 13 case shall
93 be converted without court order when the debtor files
94 a notice of conversion under §§ 1208(a) or 1307(a).
95 The filing date of the notice becomes the date of the
96 conversion order for the purposes of applying §

97 348(c) and Rule 1019. The clerk shall promptly

98 transmit a copy of the notice to the United States

99 trustee.

COMMITTEE NOTE

Subdivision (b)(3), which provides that notice of dismissal for failure to pay the filing fee shall be sent to all creditors within 30 days after the dismissal, is deleted as unnecessary. Rule 2002(f) provides for notice to creditors of the dismissal of a case.

Rule 2002(a) and this rule currently require notice to all creditors of a hearing on dismissal of a voluntary chapter 7 case for the debtor's failure to file a list of creditors, schedules, and statement of financial affairs within the time provided in § 707(a)(3) of the Code. A new subdivision (c) is added to provide that the United States trustee, who is the only entity with standing to file a motion to dismiss under § 707(a)(3) or § 1307(c)(9), is required to serve the motion on only the debtor, the trustee, and any other entities as the court directs. This amendment, and the amendment to Rule 2002, will have the effect of avoiding the expense of sending notices of the motion to all creditors in a chapter 7 case.

New subdivision (f) is the same as current subdivision (d), except that it provides that a motion to suspend all proceedings in a case or to dismiss a case for substantial abuse of chapter 7 under § 707(b) is governed by Rule 9014.

Other amendments to this rule are stylistic or for clarification.

Gap Report on Rule 1017. No changes since publication, except for stylistic changes in Rule 1017(e) and (f).

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

1 When a chapter 11, chapter 12, or chapter 13 case has
2 been converted or reconverted to a chapter 7 case:
3 (1) FILING OF LISTS, INVENTORIES,
4 SCHEDULES, STATEMENTS.
5 * * * * *
6 (B) If a statement of intention is
7 required, it ~~The statement of intention, if~~
8 ~~required,~~ shall be filed within 30 days
9 ~~following~~ after entry of the order of
10 conversion or before the first date set for the
11 meeting of creditors, whichever is earlier. The
12 court may grant an ~~An~~ extension of time ~~may~~
13 ~~be granted~~ for cause only on written motion

14 filed, or oral request made during a hearing,
15 ~~motion made~~ before the time has expired.
16 Notice of an extension shall be given to the
17 United States trustee and to any committee,
18 trustee, or other party as the court may direct.
19 * * * * *
20 (6) ~~FILING OF~~ POSTPETITION CLAIMS;
21 PRECONVERSION ADMINISTRATIVE
22 EXPENSES; NOTICE. A request for payment of an
23 administrative expense incurred before conversion of
24 the case is timely filed under § 503(a) of the Code if
25 it is filed before conversion or a time fixed by the
26 court. If the request is filed by a governmental unit,
27 it is timely if it is filed before conversion or within the
28 later of a time fixed by the court or 180 days after the
29 date of the conversion. A claim of a kind specified in

30 § 348(d) may be filed in accordance with Rules 3001(a)-(d)
31 and 3002. ~~On~~ Upon the filing of the schedule of unpaid debts
32 incurred after commencement of the case and before
33 conversion, the clerk, or some other person as the court may
34 direct, shall give notice to those entities listed on the schedule
35 of the time for filing a request for payment of an
36 administrative expense and, unless a notice of insufficient
37 assets to pay a dividend is mailed in accordance with Rule
38 2002(e), the time for filing a claim of a kind specified in
39 § 348(d). ~~notice to those entities, including the United States,~~
40 ~~any state, or any subdivision thereof, that their claims may be~~
41 ~~filed pursuant to Rules 3001(a)-(d) and 3002. Unless a notice~~
42 ~~of insufficient assets to pay a dividend is mailed pursuant to~~
43 ~~Rule 2002(e), the court shall fix the time for filing claims~~
44 ~~arising from the rejection of executory contracts or~~
45 ~~unexpired leases under §§ 348(e) and 365(d) of the Code.~~
46 * * * * *

COMMITTEE NOTE

Paragraph (1)(B) is amended to clarify that a motion for an extension of time to file a statement of intention must be made by written motion filed before the time expires, or by oral request made at a hearing before the time expires.

Subdivision (6) is amended to provide that a holder of an administrative expense claim incurred after the commencement of the case, but before conversion to chapter 7, is required to file a request for payment under § 503(a) within a time fixed by the court, rather than a proof of claim under § 501 and Rules 3001(a)-(d) and 3002. The 180-day period applicable to governmental units is intended to conform to § 502(b)(9) of the Code and Rule 3002(c)(1). It is unnecessary for the court to fix a time for filing requests for payment if it appears that there are not sufficient assets to pay preconversion administrative expenses. If a time for filing a request for payment of an administrative expense is fixed by the court, it may be enlarged as provided in Rule 9006(b). If an administrative expense claimant fails to timely file the request, it may be tardily filed under § 503(a) if permitted by the court for cause.

The final sentence of Rule 1019(6) is deleted because it is unnecessary in view of the other amendments to this paragraph. If a party has entered into a postpetition contract or lease with the trustee or debtor that constitutes an administrative expense, a timely request for payment must be filed in accordance with this paragraph and § 503(b) of the Code. The time for filing a proof of claim in connection with the rejection of any other executory contract or unexpired lease is governed by Rule 3002(c)(4).

The phrase "including the United States, any state, or any subdivision thereof" is deleted as unnecessary. Other amendments to this rule are stylistic.

Gap Report on Rule 1019. The proposed amendments to Rule 1019(6) were changed to delete the deadline for filing requests for payment of preconversion administrative expenses that would be applicable in all cases, and to provide instead that the court may fix such a deadline. The committee note was revised to clarify that it is not necessary for the court to fix a deadline where there are insufficient assets to pay preconversion administrative expenses.

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

1 (a) TWENTY–DAY NOTICES TO PARTIES IN
2 INTEREST. Except as provided in subdivisions (h), (i), and
3 (l) of this rule, the clerk, or some other person as the court
4 may direct, shall give the debtor, the trustee, all creditors and
5 indenture trustees at least 20 days' notice by mail of:
6 (1) the meeting of creditors under § 341 or
7 § 1104(b) of the Code;
8 * * * * *

9 (4) in a chapter 7 liquidation, a chapter 11
10 reorganization case, or ~~and~~ a chapter 12 family farmer
11 debt adjustment case, the hearing on the dismissal of
12 the case or the conversion of the case to another
13 chapter, unless the hearing is under § 707(a)(3) or
14 § 707(b) ~~of the Code~~ or is on dismissal of the case for
15 failure to pay the filing fee~~, or the conversion of the~~
16 ~~case to another chapter~~;

17 * * * * *

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

22 * * * * *

23 (2) the dismissal or the conversion of the
24 case to another chapter, or the suspension of
25 proceedings under § 305;

26 * * * * *

COMMITTEE NOTE

Paragraph (a)(4) is amended to conform to the amendments to Rule 1017. If the United States trustee files a motion to dismiss a case for the debtor's failure to file the list of creditors, schedules, or the statement of financial affairs within the time specified in § 707(a)(3), the amendments to this rule and to Rule 1017 eliminate the requirement that all creditors receive notice of the hearing.

Paragraph (a)(4) is amended further to conform to Rule 1017(b), which requires that notice of the hearing on dismissal of a case for failure to pay the filing fee be served on only the debtor and the trustee.

Paragraph (f)(2) is amended to provide for notice of the suspension of proceedings under § 305.

Gap Report on Rule 2002. No changes since publication.

Rule 2003. Meeting of Creditors or Equity Security Holders

1 * * * * *

2 (d) REPORT OF ELECTION AND RESOLUTION

3 OF DISPUTES IN A CHAPTER 7 CASE ~~TO THE COURT~~.

4 (1) *Report of Undisputed Election.* In a

5 chapter 7 case, if the election of a trustee or a member

6 of a creditors' committee is not disputed, the United

7 States trustee shall promptly file a report of the

8 election, including the name and address of the person
9 or entity elected and a statement that the election is
10 undisputed.
11 (2) *Disputed Election.* If the election is
12 disputed, the United States trustee shall promptly file
13 a report stating that the election is disputed, informing
14 the court of the nature of the dispute, and listing the
15 name and address of any candidate elected under any
16 alternative presented by the dispute. No later than the
17 date on which the report is filed, the United States
18 trustee shall mail a copy of the report to any party in
19 interest that has made a request to receive a copy of
20 the report. ~~The presiding officer shall transmit to the~~
21 ~~court the name and address of any person elected~~
22 ~~trustee or entity elected a member of a creditors'~~
23 ~~committee. If an election is disputed, the presiding~~
24 ~~officer shall promptly inform the court in writing that~~
25 ~~a dispute exists.~~ Pending disposition by the court of

26 a disputed election for trustee, the interim trustee shall
27 continue in office. ~~If no motion for the resolution of~~
28 ~~such election dispute is made to the court within 10~~
29 ~~days after the date of the creditors' meeting,~~ Unless a
30 motion for the resolution of the dispute is filed no
31 later than 10 days after the United States trustee files
32 a report of a disputed election for trustee, the interim
33 trustee shall serve as trustee in the case.
34 * * * * *

COMMITTEE NOTE

Subdivision (d) is amended to require the United States trustee to mail a copy of a report of a disputed election to any party in interest that has requested a copy of it. Also, if the election is for a trustee, the rule as amended will give a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute.

The substitution of "United States trustee" for "presiding officer" is stylistic. Section 341(a) of the Code provides that the United States trustee shall preside at the meeting of creditors. Other amendments are designed to conform to the style of Rule 2007.1(b)(3) regarding the election of a trustee in a chapter 11 case.

Gap Report on Rule 2003. No changes since publication.

Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

1 * * * * *

2 (e) STAY OF CONFIRMATION ORDER. An

3 order confirming a plan is stayed until the expiration of 10

4 days after the entry of the order, unless the court orders

5 otherwise.

COMMITTEE NOTE

Subdivision (e) is added to provide sufficient time for a party to request a stay pending appeal of an order confirming a plan under chapter 9 or chapter 11 of the Code before the plan is implemented and an appeal becomes moot. Unless the court orders otherwise, any transfer of assets, issuance of securities, and cash distributions provided for in the plan may not be made before the expiration of the 10-day period. The stay of the confirmation order under subdivision (e) does not affect the time for filing a notice of appeal from the confirmation order in accordance with Rule 8002.

The court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately. Alternatively, the court may order that the stay under Rule 3020(e) is for a fixed period less than 10 days.

Gap Report on Rule 3020. No changes since publication.

Rule 3021. Distribution Under Plan

1 Except as provided in Rule 3020(e), ~~After~~
2 ~~confirmation of a plan~~ after a plan is confirmed, distribution
3 shall be made to creditors whose claims have been allowed,
4 to interest holders whose interests have not been disallowed,
5 and to indenture trustees who have filed claims ~~pursuant to~~
6 under Rule 3003(c)(5) that have been allowed. For ~~the~~
7 ~~purpose~~ purposes of this rule, creditors include holders of
8 bonds, debentures, notes, and other debt securities, and
9 interest holders include the holders of stock and other equity
10 securities, of record at the time of commencement of
11 distribution, unless a different time is fixed by the plan or the
12 order confirming the plan.

COMMITTEE NOTE

This amendment is to conform to the amendments to Rule 3020 regarding the ten-day stay of an order confirming a plan in a chapter 9 or chapter 11 case. The other amendments are stylistic.

Gap Report on Rule 3021. No changes since publication.

19 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

1 (a) RELIEF FROM STAY; PROHIBITING OR
2 CONDITIONING THE USE, SALE, OR LEASE OF
3 PROPERTY.

4 * * * * *

5 (3) STAY OF ORDER. An order granting
6 a motion for relief from an automatic stay made in
7 accordance with Rule 4001(a)(1) is stayed until the
8 expiration of 10 days after the entry of the order,
9 unless the court orders otherwise.

* * * * *

COMMITTEE NOTE

Paragraph (a)(3) is added to provide sufficient time for a party to request a stay pending appeal of an order granting relief from an automatic stay before the order is enforced or implemented. The stay under paragraph (a)(3) is not applicable to orders granted ex parte in accordance with Rule 4001(a)(2).

The stay of the order does not affect the time for filing a notice of appeal in accordance with Rule 8002. While the enforcement and implementation of an order granting relief from the

automatic stay is temporarily stayed under paragraph (a)(3), the automatic stay continues to protect the debtor, and the moving party may not foreclose on collateral or take any other steps that would violate the automatic stay.

The court may, in its discretion, order that Rule 4001(a)(3) is not applicable so that the prevailing party may immediately enforce and implement the order granting relief from the automatic stay. Alternatively, the court may order that the stay under Rule 4001(a)(3) is for a fixed period less than 10 days.

Gap Report on Rule 4001. No changes since publication.

Rule 4004. Grant or Denial of Discharge

1 (a) TIME FOR FILING COMPLAINT
2 OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED.
3 In a chapter 7 liquidation case a complaint objecting to the
4 debtor's discharge under § 727(a) of the Code shall be filed
5 ~~not~~ no later than 60 days ~~following~~ after the first date set for
6 the meeting of creditors ~~held pursuant to~~ under § 341(a). In
7 a chapter 11 reorganization case, ~~such~~ the complaint shall be
8 filed ~~not~~ no later than the first date set for the hearing on
9 confirmation. ~~Not less than 25 days~~ At least 25 days' notice
10 of the time so fixed shall be given to the United States trustee

11 and all creditors as provided in Rule 2002(f) and (k), and to

12 the trustee and the trustee's attorney.

13 (b) EXTENSION OF TIME. On motion of any

14 party in interest, after hearing on notice, the court may ~~extend~~

15 for cause extend the time to file ~~for filing~~ a complaint

16 objecting to discharge. The motion shall be ~~made~~ filed before

17 ~~such~~ the time has expired.

18 * * * * *

COMMITTEE NOTE

Subdivision (a) is amended to clarify that, in a chapter 7 case, the deadline for filing a complaint objecting to discharge under § 727(a) is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. The time for filing the complaint is not affected by any delay in the commencement or conclusion of the meeting of creditors. This amendment does not affect the right of any party in interest to file a motion for an extension of time to file a complaint objecting to discharge in accordance with Rule 4004(b).

The substitution of the word "filed" for "made" in subdivision (b) is intended to avoid confusion regarding the time when a motion is "made" for the purpose of applying these rules. *See, e.g., In re Coggin*, 30 F.3d 1443 (11th Cir. 1994). As amended, this rule requires that a motion for an extension of time for filing a complaint objecting to discharge be *filed* before the time has expired.

Other amendments to this rule are stylistic.

Gap Report on Rule 4004. No changes since publication.

Rule 4007. Determination of Dischargeability of a Debt

* * * * *

1 (c) TIME FOR FILING COMPLAINT UNDER
2 § 523(c) IN A CHAPTER 7 LIQUIDATION, CHAPTER 11
3 REORGANIZATION, OR ~~AND~~ CHAPTER 12 FAMILY
4 FARMER'S DEBT ADJUSTMENT ~~CASES~~ CASE;
5 NOTICE OF TIME FIXED. A complaint to determine the
6 dischargeability of ~~any~~ a debt ~~pursuant to~~ under § 523(c) ~~of~~
7 ~~the Code~~ shall be filed ~~not~~ no later than 60 days ~~following~~
8 after the first date set for the meeting of creditors ~~held~~
9 ~~pursuant to~~ under § 341(a). The court shall give all creditors
10 ~~not~~ no less than 30 ~~days~~ days' notice of the time so fixed in
11 the manner provided in Rule 2002. On motion of ~~any~~ a party
12 in interest, after hearing on notice, the court may for cause
13 extend the time fixed under this subdivision. The motion shall
14 be ~~made~~ filed before the time has expired.

23 FEDERAL RULES OF BANKRUPTCY PROCEDURE

15 (d) TIME FOR FILING COMPLAINT

16 UNDER § 523(c) IN A CHAPTER 13 INDIVIDUAL'S

17 DEBT ADJUSTMENT CASE ~~CASES~~; NOTICE OF TIME

18 FIXED. On motion by a debtor for a discharge under

19 § 1328(b), the court shall enter an order fixing ~~a time for the~~

20 ~~filing of~~ the time to file a complaint to determine the

21 dischargeability of any debt ~~pursuant to~~ under § 523(c) and

22 shall give ~~not~~ no less than 30 ~~days~~ days' notice of the time

23 fixed to all creditors in the manner provided in Rule 2002.

24 On motion of any party in interest, after hearing on notice, the

25 court may for cause extend the time fixed under this

26 subdivision. The motion shall be ~~made~~ filed before the time

27 has expired.

28 * * * * *

COMMITTEE NOTE

Subdivision (c) is amended to clarify that the deadline for filing a complaint to determine the dischargeability of a debt under § 523(c) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. The time

for filing the complaint is not affected by any delay in the commencement or conclusion of the meeting of creditors. This amendment does not affect the right of any party in interest to file a motion for an extension of time to file a complaint to determine the dischargeability of a debt in accordance with this rule.

The substitution of the word "filed" for "made" in the final sentences of subdivisions (c) and (d) is intended to avoid confusion regarding the time when a motion is "made" for the purpose of applying these rules. *See, e.g., In re Coggin*, 30 F.3d 1443 (11th Cir. 1994). As amended, these subdivisions require that a motion for an extension of time be *filed* before the time has expired.

The other amendments to this rule are stylistic.

Gap Report on Rule 4007. No changes since publication, except for stylistic changes in the heading of Rule 4007(d).

Rule 6004. Use, Sale, or Lease of Property

1 * * * * *

2 (g) STAY OF ORDER AUTHORIZING USE,

3 SALE, OR LEASE OF PROPERTY. An order authorizing

4 the use, sale, or lease of property other than cash collateral is

5 stayed until the expiration of 10 days after entry of the order,

6 unless the court orders otherwise.

COMMITTEE NOTE

Subdivision (g) is added to provide sufficient time for a party to request a stay pending appeal of an order authorizing the use, sale, or lease of property under § 363(b) of the Code before the order is implemented. It does not affect the time for filing a notice of appeal in accordance with Rule 8002.

Rule 6004(g) does not apply to orders regarding the use of cash collateral and does not affect the trustee's right to use, sell, or lease property without a court order to the extent permitted under § 363 of the Code.

The court may, in its discretion, order that Rule 6004(g) is not applicable so that the property may be used, sold, or leased immediately in accordance with the order entered by the court. Alternatively, the court may order that the stay under Rule 6004(g) is for a fixed period less than 10 days.

Gap Report on Rule 6004. No changes since publication.

Rule 6006. Assumption, Rejection ~~and~~ or Assignment of an Executory ~~Contracts and~~ Contract or Unexpired ~~Leases~~ Lease

1 * * * * *

2 (d) STAY OF ORDER AUTHORIZING

3 ASSIGNMENT. An order authorizing the trustee to assign an

4 executory contract or unexpired lease under § 365(f) is stayed

5 until the expiration of 10 days after the entry of the order,

6 unless the court orders otherwise.

COMMITTEE NOTE

Subdivision (d) is added to provide sufficient time for a party to request a stay pending appeal of an order authorizing the assignment of an executory contract or unexpired lease under § 365(f) of the Code before the assignment is consummated. The stay under subdivision (d) does not affect the time for filing a notice of appeal in accordance with Rule 8002.

The court may, in its discretion, order that Rule 6006(d) is not applicable so that the executory contract or unexpired lease may be assigned immediately in accordance with the order entered by the court. Alternatively, the court may order that the stay under Rule 6006(d) is for a fixed period less than 10 days.

Gap Report on Rule 6006. No changes since publication.

Rule 7001. Scope of Rules of Part VII

1 An adversary proceeding is governed by the rules of

2 this Part VII. ~~It is a proceeding~~ The following are adversary

3 proceedings:

4 (1) a proceeding to recover money or

5 property, ~~except~~ other than a proceeding to compel the

6 debtor to deliver property to the trustee, or a
7 proceeding under § 554(b) or § 725 of the Code, Rule
8 2017, or Rule 6002~~,~~;

9 (2) a proceeding to determine the validity,
10 priority, or extent of a lien or other interest in
11 property, other than a proceeding under Rule
12 4003(d)~~,~~;

13 (3) a proceeding to obtain approval
14 ~~pursuant to~~ under § 363(h) for the sale of both the
15 interest of the estate and of a co-owner in property~~,~~;

16 (4) a proceeding to object to or revoke a
17 discharge~~,~~;

18 (5) a proceeding to revoke an order of
19 confirmation of a chapter 11, chapter 12, or chapter 13
20 plan~~,~~;

21 (6) a proceeding to determine the
22 dischargeability of a debt~~,~~;

23 (7) a proceeding to obtain an injunction or
24 other equitable relief, except when a chapter 9,
25 chapter 11, chapter 12, or chapter 13 plan provides for
26 the relief;
27 (8) a proceeding to subordinate any
28 allowed claim or interest, except when a chapter 9,
29 chapter 11, chapter 12, or chapter 13 plan provides for
30 subordination ~~is provided in a chapter 9, 11, 12, or 13~~
31 ~~plan,~~;
32 (9) a proceeding to obtain a declaratory
33 judgment relating to any of the foregoing~~,~~; or
34 (10) a proceeding to determine a claim or
35 cause of action removed ~~pursuant to~~ under 28 U.S.C.
36 § 1452.

COMMITTEE NOTE

This rule is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief that is provided for in a plan under circumstances in which substantive law permits the relief. Other amendments are stylistic.

Gap Report on Rule 7001. No changes since publication, except for stylistic changes.

Rule 7004. Process; Service of Summons, Complaint

1 * * * * *

2 (e) SUMMONS: TIME LIMIT FOR SERVICE

3 WITHIN THE UNITED STATES. ~~If service is made~~

4 ~~pursuant to Rule 4(e)-(j)~~ Service made under Rule 4(e), (g),

5 (h)(1), (i), or (j)(2) F.R.Civ.P. ~~it~~ shall be ~~made~~ by delivery of

6 the summons and complaint within 10 days after the

7 summons is issued ~~following issuance of the summons~~. If

8 service is ~~made~~ by any authorized form of mail, the summons

9 and complaint shall be deposited in the mail within 10 days

10 after the summons is issued ~~following issuance of the~~

11 ~~summons~~. If a summons is not timely delivered or mailed,

12 another summons shall be issued and served. This

13 subdivision does not apply to service in a foreign country.

14 * * * * *

COMMITTEE NOTE

Subdivision (e) is amended so that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.

Gap Report on Rule 7004. No changes since publication.

Rule 7062. Stay of Proceedings to Enforce a Judgment

1 Rule 62 F.R.Civ.P. applies in adversary proceedings.

2 ~~An order granting relief from an automatic stay provided by~~

3 ~~§ 362, § 922, § 1201, or § 1301 of the Code, an order~~

4 ~~authorizing or prohibiting the use of cash collateral or the use,~~

5 ~~sale or lease of property of the estate under § 363, an order~~

6 ~~authorizing the trustee to obtain credit pursuant to § 364, and~~

7 ~~an order authorizing the assumption or assignment of an~~

8 ~~executory contract or unexpired lease pursuant to § 365 shall~~

9 ~~be additional exceptions to Rule 62(a).~~

COMMITTEE NOTE

The additional exceptions to Rule 62(a) consist of orders that are issued in contested matters. These exceptions are deleted from this rule because of the amendment to Rule 9014 that renders this rule inapplicable in contested matters unless the court orders otherwise. *See also* the amendments to Rules 3020, 3021, 4001, 6004, and 6006

that delay the implementation of certain types of orders for a period of ten days unless the court otherwise directs.

Gap Report on Rule 7062. No changes since publication.

Rule 9006. Time

1 *****

2 (b) ENLARGEMENT.

3 *****

4 (2) ENLARGEMENT NOT
5 PERMITTED. The court may not
6 enlarge the time for taking action
7 under Rules 1007(d), ~~1017(b)(3),~~
8 2003(a) and (d), 7052, 9023, and
9 9024.

10 *****

COMMITTEE NOTE

Rule 9006(b)(2) is amended to conform to the abrogation of Rule 1017(b)(3).

Gap Report on Rule 9006. The proposed amendment to Rule 9006(b)(2) has been added as a technical change to conform to the abrogation of Rule 1017(b)(3). The proposed amendment to Rule

9006(c)(2), providing that the time under Rule 1019(6) to file a request for payment of an administrative expense after a case is converted to chapter 7 could not be reduced by the court, was deleted. The proposed amendments to Rule 1019(6) have been changed so that the court will fix the time for filing the request for payment. Since the court will fix the time limit, the court should have the power to reduce it. *See* Gap Report to Rule 1019(6).

Rule 9014. Contested Matters

1 In a contested matter in a case under the Code not
2 otherwise governed by these rules, relief shall be requested by
3 motion, and reasonable notice and opportunity for hearing
4 shall be afforded the party against whom relief is sought. No
5 response is required under this rule unless the court orders an
6 answer to a motion. The motion shall be served in the
7 manner provided for service of a summons and complaint by
8 Rule 7004, and, unless the court otherwise directs, the
9 following rules shall apply: 7021, 7025, 7026, 7028-7037,
10 7041, 7042, 7052, 7054-7056, ~~7062,~~ 7064, 7069, and 7071.
11 The court may at any stage in a particular matter direct that
12 one or more of the other rules in Part VII shall apply. An
13 entity that desires to perpetuate testimony may proceed in the

14 same manner as provided in Rule 7027 for the taking of a
15 deposition before an adversary proceeding. The clerk shall
16 give notice to the parties of the entry of any order directing
17 that additional rules of Part VII are applicable or that certain
18 of the rules of Part VII are not applicable. The notice shall be
19 given within such time as is necessary to afford the parties a
20 reasonable opportunity to comply with the procedures made
21 applicable by the order.

COMMITTEE NOTE

This rule is amended to delete Rule 7062 from the list of Part VII rules that automatically apply in a contested matter.

Rule 7062 provides that Rule 62 F.R.Civ.P., which governs stays of proceedings to enforce a judgment, is applicable in adversary proceedings. The provisions of Rule 62, including the ten-day automatic stay of the enforcement of a judgment provided by Rule 62(a) and the stay as a matter of right by posting a supersedeas bond provided in Rule 62(d), are not appropriate for most orders granting or denying motions governed by Rule 9014.

Although Rule 7062 will not apply automatically in contested matters, the amended rule permits the court, in its discretion, to order that Rule 7062 apply in a particular matter, and Rule 8005 gives the court discretion to issue a stay or any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. In addition, amendments to Rules 3020, 4001,

6004, and 6006 automatically stay certain types of orders for a period of ten days, unless the court orders otherwise.

Gap Report on Rule 9014. No changes since publication.

○