

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

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FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1007, 3004, 3005, 4008, 7004, and 9006 and Official Forms 6G, 16D, and 17 with a recommendation that they be approved and transmitted to the Judicial Conference. The scheduled public hearing on the amendments was canceled because no one requested to testify.

The proposed amendment to Rule 1007 requires the debtor in a voluntary bankruptcy case to submit with the petition a list of the names and addresses of each person and entity entitled — under specified schedules prescribed by the Official Forms — to receive notice of the bankruptcy filing. Virtually all courts have adopted a local rule requiring the debtor to provide such mailing information, commonly called the “mailing matrix.” The information required by the amendment ensures that all entities entitled to receive notice will be mailed notices, including codebtors and nondebtor parties to executory contracts and unexpired leases.

Under the proposed amendments to Rule 3004, the debtor and trustee may not file a proof of claim as provided for in § 501(c) of the Bankruptcy Code until the creditors’ opportunity to file a proof of claim has expired. The amendments also delete the present provision authorizing a creditor to file a proof of claim superseding an earlier proof of claim filed by a debtor or trustee, because under the amendments a debtor or trustee may no longer file a proof of claim before the time to file a claim by the creditor has expired.

The proposed amendments to Rule 3005(a) conform to the proposed amendments to Rule 3004 and delete, because it is unnecessary, the language in the existing rule that permits a creditor to file a proof of claim that supersedes a claim filed on behalf of the creditor by a codebtor. The proposed amendments to Rule 3004 and § 501 of the Code obviate the need for the existing language, because a codebtor may no longer file a proof of claim before the creditor's time to file has expired.

The proposed amendments to Rule 4008 establish deadlines for filing a reaffirmation agreement. The amendments also eliminate the deadlines for setting and holding the discharge hearing and instead provide a court with discretion to set and hold the hearing as appropriate under the circumstances of each case. Any party to the reaffirmation agreement may file it with the court.

The proposed amendments to Rule 7004 explicitly authorize a clerk of court to issue a summons by electronic means, including the sealing of the summonses. The amendments address only the issuance of the summons and not service of the summons, which must be accomplished in the traditional manner.

Rule 9006 would be amended to clarify the method of counting the additional three days provided to respond if service is by mail or by one of the methods prescribed in Civil Rule 5(b)(2)(C) or (D). The counting of the three days commences after the prescribed period to respond otherwise expires. Similar amendments are being proposed to Civil Rule 6.

The proposed revisions to Official Forms 6-G, 16D, and 17 were not published for comment because they are technical and conforming amendments. The revision to Schedule G of Form 6 deletes a note reminding the preparer that entities listed on the schedule will not automatically receive notice of the filing. The note is no longer necessary in light of the proposed amendment of Rule 1007, which requires a listing of names and addresses of persons

to whom notice of the filing is to be sent. The effective date of the amendment to the form should coincide with the effective date of the proposed amendments to Rule 1007, *i.e.*, December 1, 2005.

The proposed amendments to Forms 16D and 17 delete cross-references to recently abrogated Forms.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference —

- a. Approve the proposed amendments to Bankruptcy Rules 1007, 3004, 3005, 4008, 7004, and 9006, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law;
- b. Approve the proposed amendments to Official Forms 16D and 17 to take effect on December 1, 2004; and
- c. Approve the proposed amendments to Schedule G of Official Form 6 to take effect on December 1, 2005.

The proposed amendments to the Federal Rules of Bankruptcy Procedure and Official Forms are in Appendix B with an excerpt from the advisory committee report.

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