

**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, 2015, 3001, 7054, and 7056; proposed revisions to Official Forms 1, 9A–9I, 10, and 25A; and proposed new Official Forms 10 (Attachment A), 10 (Supplement 1), and 10 (Supplement 2), with a recommendation that they be approved and transmitted to the Judicial Conference. Except as noted below, the proposed changes were circulated to the bench and bar for comment in August 2010. Six witnesses appeared at a public hearing conducted on February 4, 2011, in Washington, D.C. The other scheduled public hearing on the proposed changes was canceled because the one witness who requested to testify at that hearing agreed to testify at the February 2011 hearing. The advisory committee considered more than 35 written comments on the proposed amendments.

Rule 1007

This proposed amendment is a technical and conforming amendment to remove an inconsistency created by an amendment to Rule 1007(a) that went into effect on December 1, 2010. The proposed amendment eliminates the current inclusion in Rule 1007(c) of a time limit for filing the list of creditors in an involuntary bankruptcy case. That time limit in the current Rule 1007(c) is inconsistent with the limit in Rule 1007(a)(2), which was amended on December 1, 2010, to reduce the period to file the list of creditors from 14 to seven days. The proposed

amendment to Rule 1007(c) eliminates the redundant reference to Rule 1007(a)(2) and its creation of a conflicting time limit. Because this is a technical and conforming amendment, publication for public comment was unnecessary.

Rule 2015

The proposed amendment to Rule 2015(a) corrects a reference to 11 U.S.C. § 704 of the Bankruptcy Code. The 2005 amendments to the Code broke up § 704 into subsections. The proposed amendment changes the reference to the pre-2005 § 704(8) in Rule 2015(a) to § 704(a)(8). Because this is a technical and conforming amendment, publication for public comment was unnecessary.

Rule 3001

The proposed amendment addresses the documents required for proofs of claim based on an open-end or revolving consumer credit account, such as credit card debt. Subdivision (c)(1) currently requires a creditor to attach to a proof of claim either the original or duplicate of the writing, if any, on which a claim or an interest in property is based. That provision would be amended to create an exception for claims governed by paragraph (3) of the subdivision. For claims based on an open-end or revolving consumer credit agreement, new paragraph (3) requires that a statement be filed with the proof of claim providing the following information, to the extent applicable: the name of the entity from whom the creditor purchased the account; the name of the entity to whom the debt was owed at the time of the account holder's last transaction; the date of the account holder's last transaction; the date of the last payment on the account; and the charge-off date. There are a number of reasons for the clarified disclosure obligations. Because claims of this type — primarily for credit card debts — are frequently sold, the claim filer may be an entity unknown to the debtor. The debtor often needs the information paragraph (3) would require to associate the claim with a known account and to know whether

the claim is timely. A party in interest may obtain a copy of the writing on which an open-end or revolving consumer credit claim is based by requesting it in writing from the claim holder.

These proposed amendments are revisions of proposals first published for comment in August 2009. The proposals were republished in August 2010 with revisions based on comments received after the 2009 publication. As published in August 2009, the proposed amendments to Rule 3001(c) would have required the holder of a claim based on an open-end or revolving consumer credit agreement to attach to its proof of claim the last account statement sent to the debtor before the commencement of the bankruptcy case. During the public comment period, many supported the increased disclosure requirements, but representatives of bulk purchasers of credit card debt objected to the account statement requirement, asserting that the statement will often not be available when the proof of claim is filed. Based on the public comments, the advisory committee concluded that if there is a less burdensome way for a creditor to provide the information needed to assess the validity of its claim, the rule should not insist on an exclusive and more costly means of providing the information. The provision was revised to allow creditors to provide relevant information in a more convenient fashion and to relieve claimants to which it applies from the general requirement of filing the original or duplicate of the writing on which the claim is based. Because the revisions were significant, the advisory committee published the revised proposal in August 2010.

The advisory committee carefully considered the comments received after publication in August 2010. The advisory committee concluded that the proposed amendment will permit better enforcement of existing disclosure obligations and will clarify how creditors seeking recovery from bankruptcy estates for claims based on open-end or revolving consumer credit agreements can meet those obligations. The advisory committee concluded that a deadline for responding to a request for the underlying writing should be added, to enable the requesting

party to determine when there has been a failure to comply if the request is met with silence. The advisory committee added a 30-day deadline for responding to a written request under proposed Rule 3001(c)(3)(B), starting from when the written request is sent and subject to enlargement or reduction by the court under Rule 9006 if cause is shown. The advisory committee also added to the committee note a statement that a proof of claim based on an open-end or revolving credit card agreement that is filed and executed in accordance with Rule 3001(a), (b), (c)(1), (c)(2), (c)(3)(A), and (e) is entitled to the benefit of subdivision (f), which provides that a proof of claim executed and filed in accordance with the rules constitutes prima facie evidence of the validity and amount of the claim. A claimant's failure to comply with proposed Rule 3001(c)(3)(B), which requires producing a copy of the writing on which the claim is based if an interested party requests it, will not affect the applicability of subdivision (f), but could subject the claimant to sanctions. The advisory committee also added a provision excepting home equity lines of credit from the Rule 3001(c)(3)(A) requirement that certain information be submitted with the proof of claim.

Finally, the advisory committee proposed amending Rule 3001(c)(1) to delete the option of filing with a proof of claim the original of a writing on which a claim is based, to conform with the instructions in Form 10. Because this proposed amendment is technical and conforming, publication for public comment was unnecessary.

Rule 7054

Rule 7054 incorporates Civil Rule 54(a)–(c) for adversary proceedings. The proposed amendment that was published for comment would amend subsection (b) on cost awards to extend the time — from one day to 14 days — for a party to respond to the prevailing party's bill of costs, and extend the time — from five to seven days — to seek court review of the costs taxed by the clerk. The first change is proposed to provide a more reasonable period for a

response. The second period was changed to conform to the 2009 time-computation amendments, which changed five-day periods in the rules to seven-day periods. The changes are also intended to make these time periods consistent with Civil Rule 54.

Rule 7056

Rule 7056 makes Civil Rule 56 applicable in adversary proceedings. Civil Rule 56 was amended in December 2010 to impose a new default deadline for filing a summary judgment motion, tying the deadline to the close of discovery. Because hearings in bankruptcy cases sometimes occur shortly after the close of discovery, the proposed amendment to Rule 7056 bases the default deadline on the scheduled hearing date, rather than the close of discovery, requiring a summary judgment motion to be filed 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought, unless a local rule or court order sets a different deadline. No comments were submitted on the proposed amendment.

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The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference —

- a. Approve the proposed amendments to Bankruptcy Rules 1007, 2015, 3001, 7054, and 7056, 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.

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