

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. Edward T. Gignoux, Chairman  
Standing Committee on Rules of Practice and Procedure

**FROM:** Hon. Morey L. Sear, Chairman  
Advisory Committee on Bankruptcy Rules

**SUBJECT:** Explanation of Changes Made Subsequent to  
the Original Publication of the November 1985  
Preliminary Draft of Proposed Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules considered the testimony of each witness at the public hearings held in San Francisco, California on February 20, 1986; in Chicago, Illinois on March 3, 1986; and in Washington, D.C. on August 17, 1986, as well as all communications received from interested individuals and groups who responded to the Committee's request for comment. Correction of typographical errors, changes in punctuation, and changes in language for clarification and to make similar rules consistent have been made. In addition, the rules have been made gender-neutral.

The significant changes made by the Advisory Committee subsequent to the original publication of the rules in November, 1985 are:

**PART I. COMMENCEMENT OF CASE;  
PROCEEDINGS RELATING TO PETITION  
AND ORDER FOR RELIEF**

**Rule 1002. Commencement of Case.**

Rule 1002 has been changed by deleting a cross reference to Rule 5005, the general rule governing the filing of papers. The revised rule requires simply that the petition be filed with the clerk. Rule 9001 defines clerk to mean the bankruptcy clerk if one has been appointed.

A sentence has been added to the Committee Note to make clear that the Official Forms of petition must be used.

**Rule 1007. Lists, Schedules and Statements; Time Limits.**

**Subdivision (b). Schedules and Statements Required.** Paragraph (2) has been changed to include a specific reference to the power of the court to exempt Chapter 13 debtors from filing certain statements.

Paragraph (3) has been changed to provide that a copy of the statement of intention shall be served on the trustee and the creditors named in it.

**Subdivision (c). Time Limits.** The time for filing a statement of intention is specified in § 521 of the Code. This subdivision has been changed to make clear that this rule does not govern that time. A technical change has been made in the third sentence to limit its applicability to conversion of Chapter 7 cases.

**Subdivision (h). Interests Acquired or Arising After Petition.** The last sentence of the subdivision has been changed to specify that the duty of a Chapter 13 debtor to file a supplemental schedule of receipt of property subject to § 541(a)(5) of the Code continues until the entry of the order discharging the debtor.

The Committee Note reflects the changes in the rule.

**Rule 1011. Responsive Pleading or Motion in Involuntary and Ancillary Cases.**

A technical change has been made in subdivision (a) to conform the rule to the language of § 304(b) of the Code.

**Rule 1017. Dismissal of Case; Suspension.**

**Subdivision (d). Procedure For Dismissal or Conversion.** Because §§ 706(a) and 1112(a) of the Code give the debtor the right to convert a case to another chapter, a proceeding to convert a case under either of these sections has been excluded from the requirements of Rule 9014 governing contested matters. A new sentence has been added to provide the procedure for conversion of a Chapter 13 case to a Chapter 7 case by the filing of a notice of conversion pursuant to § 1307(a). No court order is required.

The Committee Note for subdivision (d) reflects the changes in the rule.

**Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing Ancillary Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings.**

A second paragraph has been added to the Committee Note to explain that entry of an order for relief against an uncooperative debtor in an involuntary case is one of the sanctions available under Rule 37 F. R. Civ. P. which has been incorporated into these rules in Rule 7037.

**Rule 1019. Conversion of Chapter 11 Reorganization Case or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case.**

Paragraph (1) has been divided into two separate paragraphs designated (A) and (B) to set apart the provisions governing the statement of intention.

Paragraph (2) has been changed to require that notice of conversion of a Chapter 11 case or a Chapter 13 case to a Chapter 7 case be provided to the trustee in the superseded case.

Paragraph (3) has been given the new caption **New Filing Periods**. The text of the rule has been changed to clarify the effect upon the time period for filing claims and for filing complaints relating to the discharge or the dischargeability of a debt, resulting from the conversion of a Chapter 11 case or a Chapter 13 case to a Chapter 7 case.

Paragraph (4) has been changed to provide that if a claim was deemed allowed in a superseded Chapter 11 case pursuant to § 1111(a) of the Code, the holder of the claim must file a proof of claim in the superseding Chapter 7 case.

Paragraph (6) has been changed to impose on the Chapter 13 debtor the obligation to file a schedule of unpaid debts incurred after the commencement of the superseded Chapter 13 case.

**PART II. OFFICERS AND ADMINISTRATION;  
NOTICES; MEETINGS; EXAMINATIONS;  
ELECTIONS; ATTORNEYS AND ACCOUNTANTS**

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

Subdivisions (a), (b), (d) and (f). Each of these subdivisions refers to notice given by the clerk or some other "person" as the court may direct. The term "entity", which includes

the United States, state and local governments, and foreign countries, had been substituted in the Preliminary Draft for the term "person." The rule has been changed by restoring the original term "person" so as not to impose the cost of notice upon governmental units.

**Subdivision (a). Twenty-Day Notices to Parties in Interest.** Clause (7) has been changed to require notice of a hearing on a fee application only when the amount sought is in excess of \$500. The existing rule and the Preliminary Draft set the amount at \$100.

**Subdivision (d). Notice to Equity Security Holders.** A new clause (3) has been added which requires that equity security holders be given notice of a hearing on the proposed sale of all or substantially all of the debtor's assets.

**Subdivision (f). Other Notices.** Clause (7), which authorized the clerk or "some other person as the court may direct" to give notice of discharge, has been deleted. The effect of the deletion, when read with Rule 4004(g), is to require the clerk to provide notice of the final order of discharge.

**Subdivision (i). Notices to Committees.** A change has been made to require that a request for notice under this subdivision also be served on the trustee or debtor in possession.

**Subdivision (j). Notices to the United States.** The proposed amendment to subdivision (j) sought to eliminate specific reference to copies of notices required to be sent to various federal agencies and officers. The Preliminary Draft provided that agencies would be provided with notices on request. As a result of comments from the agencies affected, the Advisory Committee has restored the original text of the rule.

The Committee Note reflects the changes in the rule.

#### **Rule 2008. Notice to Trustee of Selection.**

This rule has been changed by providing that a trustee who has furnished a blanket bond is deemed to have accepted an appointment unless a rejection of the appointment is filed within five days following receipt of notice of selection. The change eliminates the necessity of the trustee submitting a separate acceptance in each case.

#### **Rule 2010. Qualification by Trustee; Proceeding on Bond.**

Subdivision (b) has been deleted to conform to the change made in Rule 2008.

**Rule 2012. Substitution of Trustee or Successor Trustee; Accounting.**

A new subdivision (a) has been added to the rule which provides that a trustee appointed in a Chapter 11 case is automatically substituted for the debtor in possession in pending litigation.

**Rule 2014. Employment of Professional Persons.**

**Subdivision (a), Application For an Order of Employment,** has been changed by adding the requirement that an application for approval of the employment of a professional person be accompanied by a verified statement of the professional which describes the professional's connections, if any, with the debtor and parties in interest or their attorneys or accountants.

**Rule 2015. Duty of Trustee or Debtor in Possession to Keep Records, Make Reports, and Give Notice of Case.**

A new clause (5) has been added to subdivision (a). It requires that the trustee or debtor in possession record a copy of the petition or a notice of the filing of the petition in the land office in each county in which real property of the debtor is located. The filing of the notice or a copy of the petition is essential to the protection of the estate from unauthorized post-petition conveyances of real estate.

A Committee Note has been added to explain the addition of clause (5) to subdivision (a).

**Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses.**

A new paragraph has been added to the Committee Note to make clear that the judge has the authority to ensure that the application for compensation or reimbursement is both comprehensive and detailed and reflects the nature of the services rendered and the complexity of the case.

**PART III. CLAIMS AND DISTRIBUTION TO  
CREDITORS AND EQUITY INTEREST HOLDERS; PLANS**

**Rule 3002. Filing Proof of Claim or Interest.**

**Subdivision (a), Filing Proof of Claim or Interest,** has been changed to include Rule 1019(4) to the exceptions to the

requirement for filing a proof of claim or interest. Rule 1019(4) provides that all claims actually filed by creditors in a converted Chapter 11 case or Chapter 13 case shall be deemed filed in the superseding Chapter 7 case.

A Committee Note explaining the change has been added.

**Rule 3004. Filing of Claims by Debtor or Trustee.**

The Committee Note has been rewritten to give a more complete explanation of the amendments to the rule.

**Rule 3020. Deposit; Confirmation of Plan.**

**Subdivision (b). Objections to and Hearing on Confirmation.** The last sentence of the subdivision has been changed by returning to the original concept that on confirmation of the plan, no evidence of good faith is required in the absence of timely objection.

**Subdivision (c), Order of Confirmation,** has been changed by directing that notice of entry of the order of confirmation be given in accordance with Rule 2002(f) which permits the notice to be given by the "clerk, or some other person as the court may direct." The present rule requires notice to be mailed by the clerk, which is inconsistent with Rule 2002(f).

**PART IV. THE DEBTOR: DUTIES AND BENEFITS**

**Rule 4001. Relief From Automatic Stay; Use of Cash Collateral; Obtaining Credit; Agreements.**

**Subdivisions (b), Use of Collateral; (c), Obtaining Credit; and (d), Agreement Relating to Relief From the Automatic Stay, Providing Adequate Protection, Use of Cash Collateral, and Obtaining Credit.** The five day time period provided in subdivisions (b) and (c) and the 20 day time period provided in subdivision (d) have been changed to 15 days. Subdivision (d) has been changed to permit the court to fix a different time period.

Subdivision (c)(2), which had set forth the requirements for the content of a motion to obtain credit, has been eliminated.

The Committee Note has been expanded to set forth the appropriate content of a motion seeking authority to use cash collateral and of a motion to obtain credit.

The note has been further expanded to explain subdivision (d) in greater detail.

## PART V. COURTS AND CLERKS

### Rule 5003. Records Kept By the Clerk.

Subdivision (c), **Judgments and Orders**, has been changed by eliminating the requirement that all judgments affecting the title to or a lien upon real or personal property and for money judgments be kept and indexed with the civil judgments of the district court. These judgments will now be maintained by the clerk of the district court only on the request of the prevailing party.

The Committee Note reflects the change in the rule.

### Rule 5004. Disqualification.

A Committee Note has been added to make clear that the bankruptcy judge before whom a matter is pending determines whether disqualification is required.

### Rule 5005. Filing of Papers.

Subdivision (a), **Filing**, has been changed by deleting reference to filing of the petition. This change complements the change in Rule 1002 which now specifies that the petition is filed with the clerk.

Subdivision (c) of the Preliminary Draft has been deleted. It would have made Rule 5(b) F. R. Civ. P. authorizing service on attorneys applicable in all cases under the Code.

Subdivision (d) has been moved to become new Rule 5011.

### Rule 5010. Reopening Cases.

A new sentence is added to this rule to permit the reopening of a Chapter 7 case or a Chapter 13 case without the appointment of a trustee.

### Rule 5011. Withdrawal and Abstention from Hearing a Proceeding.

Subdivision (a), **Withdrawal**; and Subdivision (b), **Abstention From Hearing A Proceeding**, are new.

**Subdivision (a), Withdrawal,** provides that a motion for withdrawal of a case or proceeding from a bankruptcy judge is heard by the district judge.

**Subdivision (b), Abstention From Hearing A Proceeding,** provides that a motion for abstention from hearing a proceeding pursuant to 28 U.S.C. § 1334(c) is heard by a bankruptcy judge in the first instance. The bankruptcy judge files a report and recommendation for disposition of the motion by the district judge pursuant to Rule 9033. The rule does not apply to motions under § 305 of the Code for abstention from hearing a case.

**Subdivision (c). Effect of Filing of Motion for Withdrawal, Abstention, or Transfer.** This subdivision was Rule 5005(d) in the Preliminary Draft and has not been changed.

A new Committee Note explains the operation of the rule in detail.

#### **PART VI. COLLECTION AND LIQUIDATION OF THE ESTATE**

##### **Rule 6004. Use, Sale, or Lease of Property.**

**Subdivision (a). Notice of Proposed Use, Sale, or Lease of Property.** A technical change has been made in subdivision (a) to provide specifically that the rule on notice of a proposed use, sale, or lease of property does not govern a motion to use cash collateral.

#### **PART VII. ADVERSARY PROCEEDINGS**

##### **Rule 7001. Scope of Rules of Part VII.**

A proceeding to compel the debtor to deliver property to the trustee is excepted from the rules covering adversary proceedings.

A Committee Note has been added to explain the change.

##### **Rule 7004. Process; Service of Summons, Complaint.**

Subdivisions (a) and (f) are changed to conform these subdivisions to recent changes in Rule 4 F. R. Civ. P.

**PART VIII. APPEALS TO DISTRICT COURT  
OR BANKRUPTCY APPELLATE PANEL**

The word "Review" has been deleted from the caption to Part VIII of the rules.

**Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Effect of Appeal to Court of Appeals.**

Section 158 of title 28 authorizes circuit councils to establish bankruptcy appellate panels to hear appeals from bankruptcy judges upon consent of all the parties. Rule 8001(e) requires that the consent of the parties be express.

**Subdivision (e), Consent to Appeal to Bankruptcy Appellate Panel,** has been changed to authorize circuit councils to promulgate a rule for a Bankruptcy Appellate Panel which provides for a method of giving consent to the hearing of an appeal by the panel that is different from the consent procedure specified in subdivision (e).

The Committee Note has been changed to reflect this change in subdivision (e).

**Rule 8008. Filing and Service.**

A change has been made in subdivision (d) to distinguish between clerk of the district court and clerk of the bankruptcy appellate panel.

**Rule 8015. Motion for Rehearing.**

The rule is changed to provide that the filing of a timely motion for rehearing after the disposition of an appeal by the appellate panel or district judge postpones the beginning of the period for appeal to the circuit court until the motion for rehearing is denied or a new judgment is entered.

**Rule 8019. Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings.**

Rule 8019 of the Preliminary Draft dealt with review of findings of fact and conclusions of law in non-core matters, rather than with appeal. It is more appropriately a general provision for inclusion in Part IX and has been moved to become new Rule 9033.

Existing Rule 8019, which was renumbered Rule 8020 in the Preliminary Draft, is restored to its original position and number.

## PART IX. GENERAL PROVISIONS

### Rule 9003. Prohibition of Ex Parte Contacts.

This rule has been changed to make the prohibition of ex parte contact applicable to district judges as well as bankruptcy judges.

A Committee Note has been added to reflect the change in the rule.

### Rule 9006. Time.

Changes have been made to reflect the changes in Rule 4001 and Rule 9033 (formerly Rule 8019).

**Subdivision (b)(2), Enlargement Not Permitted**, has been changed to remove the prohibition against enlarging the 15 day time period provided for hearing on motions for authorization to use cash collateral.

**Subdivision (b)(3), Enlargement Limited**, has been changed to include Rule 9033 which, by its own terms, authorizes an extension of up to 20 days to file objections to proposed findings of fact and conclusions of law.

**Subdivision (c)(2), Reduction Not Permitted**, has been changed to prohibit reduction of the 15 day period between the filing of a motion for authority to use cash collateral or obtain credit and the final hearing on the motion. The change, however, permits reduction of the 15 day period for filing objections to agreements under Rule 4001(d).

Rule 9003 is included in the prohibition against reduction of its time period. Accordingly, the 10 day time period for filing objections to a bankruptcy judge's proposed finding of fact and conclusions of law in a non-core proceeding may not be reduced.

The Committee Note has been recast to reflect the changes in the rule.

**Rule 9015. Jury Trial.**

This rule is abrogated.

Former § 1480 of title 28 preserved a right to trial by jury in any case or proceeding under title 11 in which jury trial was provided by statute. Rule 9015 provided the procedure for jury trials in bankruptcy courts. Section 1480 was repealed. Section 1411, added by the 1984 amendments, affords a jury trial only for personal injury or wrongful death claims, which 28 U.S.C. § 157(b)(5) requires be tried in the district court. Nevertheless, Rule 9015 has been cited as conferring a right to jury trial in other matters before bankruptcy judges. In light of the clear mandate of 28 U.S.C. § 2075 that the "rules shall not abridge, enlarge, or modify any substantive right," the Advisory Committee abrogated Rule 9015.

A Committee Note explaining the abrogation of the rule has been added.

**Rule 9020. Contempt Proceedings.**

Rule 9020 of the Preliminary Draft provided that a motion for contempt be filed in the district court and it authorized a bankruptcy judge only to certify facts of a contempt to the district court for hearing and determination.

The rule has been changed to establish a procedure which enables the bankruptcy judge to enter the contempt order. That order is effective and has the same force as though it had been entered by the district court unless objections to the order are filed within ten days. The review by the district court is much the same as the review of a district court contempt order by the court of appeals under similar circumstances.

The Committee Note has been changed to explain the procedure in light of the changes made by the 1984 amendments.

**Rule 9022. Notice of Judgment or Order.**

The reference to Rule 5005(c) in this rule has been deleted for the reason that Rule 5055(c) has been deleted from the rules. The original reference to Rule 7005 has been restored.

**Rule 9027. Removal.**

**Subdivision (a), Application,** has been changed to provide that an application for removal is filed with the bankruptcy clerk rather than with the district court clerk.

**Subdivision (d), Filing in Non-Bankruptcy Court,** has been changed by adding a specific requirement that the removal application be filed promptly with the court from which the claim or cause of action was removed.

**Subdivision (e), Remand,** has been changed to provide that the motion for remand is filed with the clerk of the bankruptcy court rather than the district court clerk. Unless the district judge orders otherwise, the bankruptcy judge hears the remand motion and files a report and recommendation which is reviewed by the district judge pursuant to Rule 9033.

**Subdivision (f), Procedure After Removal,** has been changed to make clear that in those instances in which the district court has referred a case to a bankruptcy judge, a removed claim or cause of action is included in the referral and is heard by the bankruptcy judge.

The Committee Note reflects the changes in the rule.

**Rule 9029. Local Bankruptcy Rules.**

Rule 9029 has been changed by an addition to the last sentence of the rule which conforms the rule to the 1985 amendment to Rule 83 F. R. Civ. P.

The Committee Note reflects the change in the rule.

**Rule 9033. Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings.**

This rule was Rule 8019 in the Preliminary Draft.

**Subdivision (a), Service,** has been changed to include the requirement that the clerk note on the docket the date of mailing of copies of the bankruptcy judge's proposed findings of fact and conclusions of law.

**PART X. UNITED STATES TRUSTEES**

**Rule X-1004. Notification to Trustee of Selection; Blanket Bond.**

**Subdivision (a), Notification,** of this rule has been changed to conform to the change made in Rule 2008 which provides that a trustee who has furnished a blanket bond is deemed to have accepted an appointment unless a rejection of the appointment is timely filed.

The Committee Note reflects the change in the rule.

**Rule X-1010. Prohibition of Ex Parte Contacts.**

Rule X-1010 has been changed to conform to the change made in Rule 9003 which extends the prohibition on ex parte contacts to district judges as well as bankruptcy judges.