**PROPOSED AMENDMENTS TO THE FEDERAL**

**RULES OF BANKRUPTCY PROCEDURE[[1]](#footnote-1)\***

**Rule 1010. Service of Involuntary Petition and Summons~~; Petition for Recognition of a Foreign Nonmain Proceeding~~**

(a) Service of Involuntary Petition and Summons~~; Service of Petition for Recognition of Foreign Nonmain Proceeding~~. On the filing of an involuntary petition ~~or a petition for recognition of a foreign nonmain proceeding~~, the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. ~~When a petition for recognition of a foreign nonmain proceeding is filed, service shall be made on the debtor, any entity against whom provisional relief is sought under § 1519 of the Code, and on any other party as the court may direct.~~ The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party’s last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(*l*) F.R.Civ.P. apply when service is made or attempted under this rule.

\* \* \* \* \*

**Committee Note**

 Subdivision (a) of this rule is amended to remove provisions regarding the issuance of a summons for service in certain chapter 15 proceedings. The requirements for notice and service in chapter 15 proceedings are found in Rule 2002(q).

**Rule 1011. Responsive Pleading or Motion in Involuntary ~~and Cross-Border~~ Cases**

(a) Who May Contest Petition. The debtor named in an involuntary petition~~, or a party in interest to a petition for recognition of a foreign proceeding,~~ may contest the petition. In the case of a petition against a partnership under Rule 1004, a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

\* \* \* \* \*

 (f) Corporate Ownership Statement. If the entity responding to the involuntary petition ~~or the petition for recognition of a foreign proceeding~~ is a corporation, the entity shall file with its first appearance, pleading, motion, response, or other request addressed to the court a corporate ownership statement containing the information described in Rule 7007.1.

**Committee Note**

This rule is amended to remove provisions regarding chapter 15 proceedings. The requirements for responses to a petition for recognition of a foreign proceeding are found in Rule 1012.

**Rule 1012. Responsive Pleading in Cross-Border Cases**

 (a) Who May Contest Petition. The debtor or any party in interest may contest a petition for recognition of a foreign proceeding.

 (b) Objections and Responses; When Presented. Objections and other responses to the petition shall be presented no later than seven days before the date set for the hearing on the petition, unless the court prescribes some other time or manner for responses.

 (c) Corporate Ownership Statement. If the entity responding to the petition is a corporation, then the entity shall file a corporate ownership statement containing the information described in Rule 7007.1 with its first appearance, pleading, motion, response, or other request addressed to the court.

**Committee Note**

This rule is added to govern responses to petitions for recognition in cross-border cases. It incorporates provisions formerly found in Rule 1011. Subdivision (a) provides that the debtor or a party in interest may contest the petition. Subdivision (b) provides for presentation of responses no later than 7 days before the hearing on the petition, unless the court directs otherwise. Subdivision (c) governs the filing of corporate ownership statements by entities responding to the petition.

**Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee**

\* \* \* \* \*

 (q) Notice of Petition for Recognition of Foreign Proceeding and of Court’s Intention to Communicate with Foreign Courts and Foreign Representatives.

 (1) *Notice of Petition for Recognition*. After the filing of a petition for recognition of a foreign proceeding, the court shall promptly schedule and hold a hearing on the petition. The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under §1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days’ notice by mail of the hearing ~~on the petition for recognition of a foreign proceeding~~. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding and shall include the petition and any other document the court may require. If the court consolidates the hearing on the petition with the hearing on a request for provisional relief, the court may set a shorter notice period, with notice to the entities listed in this subdivision.

\* \* \* \* \*

**Committee Note**

Subdivision (q) is amended to clarify the procedures for giving notice in cross-border proceedings. The amended rule provides, in keeping with Code § 1517(c), for the court to schedule a hearing to be held promptly on the petition for recognition of a foreign proceeding. The amended rule contemplates that a hearing on a request for provisional relief may sometimes overlap substantially with the merits of the petition for recognition. In that case, the court may choose to consolidate the hearing on the request for provisional relief with the hearing on the petition for recognition, see Rules 1018 and 7065, and accordingly shorten the usual 21-day notice period.

**Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor’s Principal Residence**

 (a) IN GENERAL. This rule applies in a chapter 13 case to claims (1) that are ~~(1)~~secured by a security interest in the debtor’s principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments~~provided for under § 1322(b)(5) of the Code in the debtor’s plan~~. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.

\* \* \* \* \*

**Committee Note**

Subdivision (a) is amended to clarify the applicability of the rule. Its provisions apply whenever a chapter 13 plan provides that contractual payments on the debtor’s home mortgage will be maintained, whether they will be paid by the trustee or directly by the debtor. The reference to § 1322(b)(5) of the Code is deleted to make clear that the rule applies even if there is no prepetition arrearage to be cured. So long as a creditor has a claim that is secured by a security interest in the debtor’s principal residence and the plan provides that contractual payments on the claim will be maintained, the rule applies.

Subdivision (a) is further amended to provide that, unless the court orders otherwise, the notice obligations imposed by this rule cease on the effective date of an order granting relief from the automatic stay with regard to the debtor’s principal residence. Debtors and trustees typically do not make payments on mortgages after the stay relief is granted, so there is generally no need for the holder of the claim to continue providing the notices required by this rule. Sometimes, however, there may be reasons for the debtor to continue receiving mortgage information after stay relief. For example, the debtor may intend to seek a mortgage modification or to cure the default. When the court determines that the debtor has a need for the information required by this rule, the court is authorized to order that the notice obligations remain in effect or be reinstated after the relief from the stay is granted.

**Rule 9006. Computing and Extending Time; Time for Motion Papers**

\* \* \* \* \*

 (f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR UNDER RULE 5(b)(2)(D)~~, (E),~~ OR (F) F.R.CIV.P. When there is a right or requirement to act or undertake some proceedings within a prescribed period after ~~service~~being served and that service is by mail or under Rule 5(b)(2)(D) (leaving with the clerk)~~, (E),~~ or (F) (other means consented to) F.R.Civ.P., three days are added after the prescribed period would otherwise expire under Rule 9006(a).

\* \* \* \* \*

**Committee Note**

Subdivision (f) is amended to remove service by electronic means under Civil Rule 5(b)(2)(E) from the modes of service that allow three added days to act after being served.

Rule 9006(f) and Civil Rule 6(d) contain similar provisions providing additional time for actions after being served by mail or by certain modes of service that are identified by reference to Civil Rule 5(b)(2). Rule 9006(f)—like Civil Rule 6(d)—is amended to remove the reference to service by electronic means under Rule 5(b)(2)(E). The amendment also adds clarifying parentheticals identifying the forms of service under Rule 5(b)(2) for which three days will still be added.

Civil Rule 5(b)—made applicable in bankruptcy proceedings by Rules 7005 and 9014(b)—was amended in 2001 to allow service by electronic means with the consent of the person served. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow three added days to act after being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. Those concerns have been substantially alleviated by advances in technology and widespread skill in using electronic transmission.

A parallel reason for allowing the three added days was that electronic service was authorized only with the consent of the person to be served. Concerns about the reliability of electronic transmission might have led to refusals of consent; the three added days were calculated to alleviate these concerns.

Diminution of the concerns that prompted the decision to allow the three added days for electronic transmission is not the only reason for discarding this indulgence. Many rules have been changed to ease the task of computing time by adopting 7-, 14-, 21-, and 28-day periods that allow “day-of-the-week” counting. Adding three days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

Electronic service after business hours, or just before or during a weekend or holiday, may result in a practical reduction in the time available to respond. Extensions of time may be warranted to prevent prejudice.

Eliminating Rule 5(b) subparagraph (2)(E) from the modes of service that allow three added days means that the three added days cannot be retained by consenting to service by electronic means. Consent to electronic service in registering for electronic case filing, for example, does not count as consent to service “by any other means” of delivery under subparagraph (F).

Subdivision (f) is also amended to conform to a corresponding amendment of Civil Rule 6(d). The amendment clarifies that only the party that is served by mail or under the specified provisions of Civil Rule 5—and not the party making service—is permitted to add three days to any prescribed period for taking action after service is made.

1. \* New material is underlined; matter to be omitted is lined through. [↑](#footnote-ref-1)