

**ADVISORY COMMITTEE
ON
BANKRUPTCY RULES**

**New Orleans, Louisiana
March 15-16, 2001**



ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March 15 - 16, 2001
New Orleans, Louisiana

Agenda

Introductory Items

1. Approval of minutes of September 2000 meeting.
2. Report on the January 2001 meeting of the Committee on Rules of Practice and Procedure (Standing Committee). (This will be an oral report by the Chairman and the Reporter.)
3. Report on the January 16, 2001, attorney conduct session. (This will be an oral report by Judge Gettleman and/or the Reporter.)
4. Report on the January 2001 meeting of the Committee on the Administration of the Bankruptcy System. (This will be an oral report by the Chairman.)

Action Items

5. Consideration of comments received to the preliminary draft of proposed amendments to Rules 1004, 2004, 2014, 2015, 4004, 9014, and 9027, new Rule 1004.1, and Official Form 1, published August 2000.
6. Consideration of new subchapter V of chapter 7 for certain multilateral clearing organizations (Federal Reserve member state banks not insured by the FDIC) and whether the new subchapter requires rules amendments or amendment to Official Form 1, the Voluntary Petition, to record the filing of a case under the new subchapter.
7. Consideration of request for delayed effective date for amended Official Form 1 to December 1, 2001, to afford publishers and software vendors time to produce and distribute the new forms, and for delayed effective date for amended Official Form 15 to December 1, 2001, to coincide with the projected effective date of amended Rule 3020.
8. Consideration of proposed new rule on financial disclosure. New Civil Rule 7.1 and Criminal Rule 12.4 were published for comment August 2000.
9. Consideration of amendments to rule and official forms to require only the last four digits of any Social Security number or account number in consideration of debtors' privacy.

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10. Consideration of amendment to Rule 9014, governing contested matters, in connection with December 1, 2000, amendment to Civil Rule 26 eliminating local opt-out of discovery requirements such as mandatory disclosures, meeting of the parties, etc.
11. Proposed draft amendment to Rule 6, Federal Rules of Appellate Procedure, to require parties to an appeal to observe the notice and approval procedures specified in Rule 9019 when settlement is reached in the Court of Appeals.
12. Proposed amendments to Official Form 5 (Involuntary Petition) and Official Form 17 (Notice of Appeal) to alert parties and clerks that if a child support creditor or its representative files the document, no filing fee is due.

Information Items

13. Report on activities of the Privacy Subcommittee of the Court Administration and Case Management Committee.
14. Report on implementation of electronic filing in the bankruptcy courts and the project to develop model local rules for electronic filing of documents by the Committee on Court Administration and Case Management.
15. Notice of automatic revision of certain dollar amounts in the Bankruptcy Code effective April 1, 2001, and copies of Official Forms 6E and 10 as amended automatically to reflect the revised dollar amounts.
16. Progress chart of proposed amendments.

Administrative Matters

17. Next meeting reminder: September 13 - 14, 2001, at the John Carver Inn, Plymouth, Massachusetts.
18. Discussion of date and place for March 2002 meeting.

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Judge Ernest G. Torres
Judge James D. Walker, Jr.
Howard L. Adelman, Esquire
K. John Shaffer, Esquire

Subcommittee on Forms

Judge James D. Walker, Jr., Chair
Judge Christopher M. Klein
Professor Mary Jo Wiggins
Eric L. Frank, Esquire
J. Christopher Kohn, Esquire

Subcommittee on Privacy and Public Access

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James J. Waldron, ex officio

Subcommittee on Style

Professor Alan N. Resnick, Chair
Judge Christopher M. Klein
Professor Mary Jo Wiggins
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Subcommittee on Technology

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

**Meeting of September 21 - 22, 2000
Arden Conference Center
Harriman, New York**

Draft Minutes

The following members attended the meeting:

District Judge Adrian G. Duplantier, Chairman
District Judge Robert W. Gettleman
District Judge Ernest G. Torres
District Judge Norman C. Roettger, Jr.
Bankruptcy Judge A. Jay Cristol
Bankruptcy Judge Robert J. Kressel
Bankruptcy Judge Donald E. Cordova
Bankruptcy Judge James D. Walker, Jr.
Professor Mary Jo Wiggins
Professor Alan N. Resnick
Leonard M. Rosen, Esquire
Eric L. Frank, Esquire
Howard L. Adelman, Esquire
J. Christopher Kohn, Esquire

Professor Kenneth N. Klee attended the second day of the meeting. District Judge Bernice B. Donald was unable to attend. Professor Jeffrey W. Morris, Reporter, attended the meeting. Bankruptcy Judge Marcia S. Krieger, a member of the Committee on the Administration of the Bankruptcy System ("Bankruptcy Administration Committee"), attended, as did Peter G. McCabe, Secretary to the Committee on Rules of Practice and Procedure ("Standing Committee") and Assistant Director, Administrative Office of the United States Courts ("Administrative Office"). An incoming member of the committee, K. John Shaffer, Esq., also attended, and the incoming chairman, Bankruptcy Judge A. Thomas Small, attended part of the meeting by telephone.

The following additional persons attended the meeting: Kevyn D. Orr, Director of the Executive Office for United States Trustees ("EOUST"); Richard G. Heltzel, Clerk, United States Bankruptcy Court for the Eastern District of the New Jersey; James J. Waldron, Clerk, United States Bankruptcy Court for the District of New Jersey; John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office; Patricia S. Ketchum, Bankruptcy Judges Division, Administrative Office; and Robert Niemic, Research Division, Federal Judicial Center.

Bankruptcy Judge Cecelia G. Morris, and Dean Karsonis and George Angelish, law clerks to Judge Morris, attended parts of the meeting as observers.

The following summary of matters discussed at the meeting should be read in conjunction with the various memoranda and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee. Votes and other action taken by the Committee and assignments by the chairman appear in **bold**.

Introductory Items

The Committee approved the minutes of the March 2000 meeting.

The Chairman noted that his term was ending along with that of several other members -- Judge Kressel, Judge Cordova, Professor Klee, and Mr. Rosen -- and said he had enjoyed both the work of the Committee and the friendships that had developed from it. He welcomed K. John Shaffer, Esq., as an incoming member. The Chairman further noted that Richard G. Heltzel, the clerk of court who had served as adviser since 1988, also would be leaving the Committee and would be replaced by James J. Waldron, whom he welcomed to the meeting. Later, the Committee presented Mr. Heltzel with a certificate of appreciation for his long and exceptional service.

June 2000 Meeting of the Standing Committee. The Chairman reported that he and the Reporter had attended the meeting and that the Standing Committee had approved the amendments proposed by the Committee to Rules 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022, and Official Form 7. The Standing Committee agreed to transmit the proposed amendments to the Judicial Conference with a recommendation that they be approved and forwarded to the Supreme Court for its consideration. The Standing Committee similarly had approved the electronic service amendments proposed by the Advisory Committee on Civil Rules to Rules 5, 6, and 77. The Chairman noted that the Committee's recommendation that parties be given three additional days to respond when served electronically had prevailed, as reflected in the proposed amendments to Rule 6. This was one of several aspects in which the relevant advisory committees had worked together to assure consistency among the federal rules. All of these proposed amendments were on the consent calendar for the Judicial Conference session scheduled for September 19. As such, he said, they would have been approved automatically and would be forwarded to the Supreme Court.

The Standing Committee also approved for publication and comment the preliminary draft amendments to Rules 1004, 2004, 2014, 2015, 4004, 9014, and 9027, and Official Form 1, that had been submitted by the Committee. The comment period on the proposed amendments will conclude on February 15, 2001.

In addition, he said, the Standing Committee had approved and sent to the Committee on Court Administration and Case Management a recommendation supported by the Committee that individual courts post their local rules on a court website. The recommendation included support for creating a link to each court's website from the Internet web page maintained by the Administrative Office.

June 2000 Meeting of the Bankruptcy Administration Committee.

Professor Resnick, who had represented the Committee at the meeting, noted that the Bankruptcy Administration Committee had discussed at length the issue of individual privacy and public access to bankruptcy case information and had made some specific recommendations that would be discussed later in the meeting. He said the Bankruptcy Administration Committee, at the request of the Committee on Federal-State Relations, also had discussed mass tort cases and whether the Judicial Conference should endorse the recommendations of the National Bankruptcy Review Commission for handling mass torts in the bankruptcy courts. A subcommittee would be studying the matter further, he said. Professor Resnick said he was surprised to learn, during a discussion of whether the United States Court Design Guide should require that jury boxes be installed in bankruptcy courtrooms, that only 15 jury trials had been held in the bankruptcy courts in the two-and-a-half years prior to the meeting. A decision was made not to require jury boxes, he said. Judge Krieger added that the Bankruptcy Administration Committee also had discussed the continuing need for certain judgeships and would be recommending that no authorized position be eliminated even though some circuits were not filling vacancies in districts with low caseloads. With respect to Iowa, which has four judgeships evenly distributed over two districts, she said, the Bankruptcy Committee had recommended that, in the event of a vacancy, the remaining three judges all be authorized to handle cases in both districts.

Action Items

Rule 2016. The Reporter said the proposed new subdivision (c) of the rule arose from a suggestion that Rule 2016, which prescribes the manner and timing of disclosures by attorneys for debtors of compensation paid or agreed to be paid to them should apply also to bankruptcy petition preparers. A member suggested deleting the first sentence of the Reporter's draft as repetitive of the statute and deleting the phrase "or at another time as the court may direct" on lines 5 and 6 to conform the draft to § 110(h)(1) of the Code, which specifies ten days. In response to questions and comments from members, the Reporter stated that the rule would impose on a petition preparer most of the requirements already imposed on attorneys, such as a duty to supplement a declaration previously filed if further compensation is received or an agreement is made to pay further compensation. By requiring a petition preparer to provide the United States trustee's office with a copy of the declaration, the rule would help that office obtain the information necessary to carry out its statutory duty to seek an injunction against any petition preparer who violates the provisions of § 110. On the second day of the meeting, the Reporter presented a redrafted amendment and Committee Note incorporating the comments of the members.

Professor Wiggins noted that § 110(f)(1) states that a petition preparer may not use the word "legal" to advertise or advertise under any category that includes the word "legal," yet Official Form 19 requires disclosure only of the name of the individual who worked on the documents. She suggested that the form should be amended to include the name under which the

petition preparer does business, to assist the United States trustee with enforcement under § 110(f)(1).

On the second day of the meeting, the Reporter presented a redraft of the proposed amendment, with the addition of a re-styling of subdivision (b) to convert its final sentence from the passive to the active voice. After discussion of the style issues raised by subdivision (b) generally, **a motion to leave subdivision (b) of the rule unchanged was unopposed.** After discussion, **the Committee approved the re-draft of subdivision (c) with the following changes: in line 24, insert “of the Code” after “§ 110(h)(1); in line 26, substitute “immediately prior to” for the word “of” in the middle of the line, and change “case” to “petition”; remove the brackets around the sentence beginning with the words “The declaration” on line 27; and add the following new sentence at the end of the subdivision, “The bankruptcy petitioner shall transmit a copy of the declaration and any supplemental declaration to the United States trustee not later than the date when it is filed.”. In the Committee Note, the Committee approved deleting all but the first sentence and adding, at the end of that sentence, the phrase “of the Code.”**

Rule 8014. The Reporter introduced a draft of an amended rule that would more closely conform to the equivalent appellate rule, Federal Rule of Appellate Procedure 39. The Committee discussed the terminology used in the draft and several suggested style changes. A member noted that the draft did not include subdivision (c) of Rule 39, which directs each court of appeals to adopt local rules governing the maximum that could be imposed as costs for copies and suggested adding similar language to the draft, for example, “the rate applicable in the circuit under Rule 39(c) unless the district court or bankruptcy appellate panel has adopted a separate rule.” On the question of whether to use the term bankruptcy “court” as the place where certain costs are taxed, a usage derived from the Rule 39 reference to the district court, the Committee discussed whether the words “judge” or “clerk” could be used instead. As it is the clerk who taxes costs, and the judge intervenes only when there is an objection, designating the judge to tax costs would not be appropriate. The question then arose concerning whether “bankruptcy clerk” would be proper, as there are consolidated courts where there is no bankruptcy clerk, and some bankruptcy cases that are handled by district court judges. A member then questioned the draft rule’s approach of taxing of all costs by the bankruptcy court, even the costs of copies of the brief, which in Rule 39 is taxed by the clerk of the court of appeals. Other members questioned the wisdom of having two clerks tax different costs and suggested that the approach taken by the draft, having one clerk tax all costs, might be preferable. **A motion to table the proposed amendment carried by a vote of 9 to 4.**

Official Form 15. Judge Kressel introduced the proposed amendment, which is intended as a conforming amendment that would implement amendments to Rule 3020 that are due to take effect December 1, 2001. The amendments to Rule 3020 would require the order confirming a plan that includes an injunction against conduct not otherwise enjoined under the Code to include language specifically describing the injunction and the entities subject to the injunction. He said the conforming nature of the amendment would make it eligible for adoption without publication

for comment and that the amended form could take effect simultaneously with the amended rule. At Mr. Rosen's suggestion, the draft amendment was changed to read as follows: "*[If the plan provides for an injunction against conduct not otherwise enjoined under the Code, include the information required by Rule 3020.]*" **There was no objection to approving the proposed amendment as modified and sending it forward without publication.**

Official Forms. Mr. Adelman said Form 15 does not serve a debtor who needs to take a confirmation order to state court. With such a bare bones order, he said, a debtor's attorney has to educate the state court judge on the provisions of the Bankruptcy Code that establish the requirements for confirming a plan. He said he would prefer a form that incorporated the provisions of § 1141 of the Code. Judge Kressel said he would view that as a step backward. He said it is dangerous to add statutory material unless all of it is included. He noted that the trend of the Committee over the last decade had been to eliminate such text, most recently from the discharge order. He added that there probably will be a forms review conducted over the next year or two, and that project would afford an opportunity to reconsider past decisions. The review project had been postponed repeatedly, he said, because the Committee was waiting for congressional action on a bankruptcy reform bill. Ultimately, with respect to the reaffirmation agreement, he said, the Committee decided to proceed with a Director's form that could be modified quickly if Congress enacted different requirements for those agreements. The Committee also had received a number of complaints about the Proof of Claim form since it had last been revised in 1994, he said. Judge Duplantier encouraged Mr. Adelman to contact Judge Small about joining the Forms Subcommittee. Judge Duplantier also noted that, as chairman of the Subcommittee on Privacy and Public Access, Mr. Adelman would be working in coordination with the Forms Subcommittee on a review of the official forms at the request of the Bankruptcy Administration Committee. [See below.]

Subcommittee on Privacy and Public Access. Mr. Adelman described the alternative approaches discussed by the subcommittee during the summer. He said the subcommittee's consensus was to "go slow" and allow the fundamental policy to develop, as rules must follow policy rather than make it. At least five other Judicial Conference committees also are studying the issue, but have not concluded their work, he said. The bankruptcy system is limited in the restraints it can apply, he added, because the Bankruptcy Code itself requires disclosure of a debtor's Social Security number on certain documents. He noted also that the executive branch is conducting a study of the financial privacy of individuals in bankruptcy cases, the report of which is due at the end of the year.

Mr. Orr stated that the EOUST is one of the three executive branch offices conducting the study of privacy in bankruptcy cases and added that the deadline for the public to submit comment had been extended by two weeks to permit more persons to participate. He added that several dozen bills touching on privacy issues had been introduced in the current Congress, indicating a high level of public interest in the subject. Judge Duplantier added that the proposed bankruptcy reform legislation, which contrastingly would require debtors to disclose even more "private" financial information than in the current forms, shows that the issues are far from

settled. Mr. McCabe noted that policies may need to be different for different types of court records. For example, he said, it may be that criminal case records will not be placed on the Internet. He also pointed out that the policy that documents filed with the court are public trumps other policies more protective of privacy, so that information that is confidential while in the custody of the executive branch, particularly the medical records in Social Security disability cases, could be placed on the Internet if the case is appealed to the courts. He said legislation, perhaps authorizing the Judicial Conference to establish policies, may be needed to resolve the problem.

Judge Walker urged the Committee to consider all alternatives. Re-examining the official forms with the intent of eliminating requests for information that is not needed may not prove fruitful, he said. The trustee and other parties in the case need the information. The Bankruptcy Code, however, provides that any document filed with the clerk is a public record, and from that statutory policy follows the widely accepted idea that anything filed ought to be available on the Internet. An alternative, he said, might be to revamp the process of who gets what information in a bankruptcy case. A list of creditors and a reduced amount of other information might be filed with the clerk and the debtor's duty to supply the rest be modeled after civil discovery. Although the disclosures would occur away from the court, he said, there would need to be rules governing the process. The idea might not be a good one, ultimately, but it should be examined, he said.

The chairman asked whether the Committee supported the idea of reviewing the official forms from a privacy standpoint. Professor Resnick said the Bankruptcy Administration Committee had discussed privacy at length at its meeting and made some recommendations, including requests to the Committee for a review of the official forms. Judge Krieger added that the Bankruptcy Administration Committee members had expressed concern not only for the privacy of debtors but also for the privacy of third parties, such as patients in a medical facility, whose names may appear in the information submitted by a debtor. Professor Resnick noted that the Committee had taken the lead in proposing amendments to facilitate electronic filing and is uniquely situated again to lead the search for solutions to the problems created in part by electronic filing. He noted that the Bankruptcy Administration Committee had recommended specifically that the Committee consider altering the forms to require disclosure of only the final four digits of a debtor's Social Security number. He suggested moving without further consideration toward publishing for comment revised official forms that would require disclosure only of the final four digits of a Social Security number, customer number, or account number. Comments provided by interested parties such as creditors, debtor advocates, and persons concerned with privacy issues generally would indicate whether the proposal is a useful one, he said. Other members spoke in support of this proposal.

Judge Walker said he would add that it should be made clear that the full Social Security number must be disclosed to any party in interest upon request. **A motion to 1) publish for comment proposed amendments to the official forms restricting the disclosure of Social Security and customer or other account numbers to the last four digits of the numbers, and 2) directing the relevant subcommittees to review the official forms generally with a view**

toward removing information from automatic disclosure with the understanding that it remains discoverable, passed without opposition. Judge Krieger asked the subcommittees to keep in mind the privacy interests not only of debtors but also of third parties, and a member requested the privacy subcommittee to consider recommending that the Committee officially support the Bankruptcy Administration Committee's proposal to request an amendment to § 107(b) of the Bankruptcy Code to permit a bankruptcy judge to provide protection from disclosure based on privacy concerns.

Proposed Rule 7007.1. The Reporter introduced the proposed amendment and presented the background for it, a request from the Standing Committee and the Committee on Codes of Conduct. The proposed amendment would require any nongovernmental corporate party in an adversary proceeding to file with the party's first pleading a statement disclosing the party's corporate parents and the identity of any publicly held company that owns ten percent or more of the party's stock. A companion amendment to Rule 9014 would extend the disclosure obligation to parties in contested matters. The appellate, civil, and criminal advisory committees already have proposed similar amendments, and the Reporter pointed out the differences between the draft before the Committee, which was offered on behalf of the Subcommittee on Attorney Conduct, Including Rule 2014 Disclosure Requirements, and the proposals of the other advisory committees.

Professor Morris noted that the draft does not require the debtor to file with the petition a statement containing disclosures required of other parties. The subcommittee's rationale, he said, was that the judge does not have to act in a bankruptcy case until some matter actually comes before the judge in the form of a motion or adversary proceeding. The Chairman said he believes the judge should have the information about a debtor's corporate parents and ownership by other publicly held companies at the inception of the case. A member said it also would be more efficient for the debtor to file the disclosure with the petition, as doing so would save having to repeat the procedure each time the debtor is involved in an adversary proceeding or contested matter during the case. **There was a consensus that disclosure by the debtor should be required at the inception of the case.** The Chairman said the Committee should use its best judgment about whether to require more disclosure than recommended by the Committee on Codes of Conduct, so long as there is a good bankruptcy reason for doing so. Mr. McCabe and Mr. Rabiej both observed that, while the Standing Committee seemed to support the idea of permitting courts to expand the scope of required disclosure through local rules, the Committee on Codes of Conduct does not.

Professor Resnick suggested putting any new rule in Part IX of the rules, so that it would apply to all proceedings, and others suggested that the requirement to file the statement with the petition be added to Rule 1007, with the information reported on Exhibit "A" to the petition. Professor Klee asked for the Committee's views on whether the disclosure of holdings should be of all types of stock or only of common. In his opinion, preferred stock is more like debt, he said, and might not need to be disclosed. Judge Duplantier said the value of preferred stock could be affected by rulings in the case, and Mr. Rosen pointed out that preferred stock also can

be converted to common. The purpose of the rule is to disclose whether another company owns part of the debtor. Mr. Rosen said the principle is the same, regardless of the type of stock, and the rule should require disclosure of stock of any class. After further discussion, **the consensus was that the ten percent should apply either to any class or to the aggregate**, in order to ensure that, for example, a debtor or other party would have to disclose the identity of any company that holds five percent of the debtor's or other party's common stock and five percent of the debtor's or other party's preferred stock. **It also was the consensus that disclosure should be required of any company that "directly or indirectly owns" the threshold percentage of stock.**

The draft rule restricts disclosure to ownership interests of "publicly held" companies. Mr. Adelman, however, said that many companies that are not publicly traded but have more than 500 shareholders and must report to the Securities and Exchange Commission as if they were publicly traded. He suggested the disclosure requirements should apply to them. The Committee also discussed whether the debtor or other party also should disclose its ownership interests in subsidiaries. The draft rules being proposed by the other advisory committees require disclosure only of parents. Mr. Rabiej said the reason stated for this narrowing of the scope of disclosure was that most of the problems that have arisen came about because the judge did not have access to the relevant information. Information about corporate parents, he said, does not appear to be readily available, although information about subsidiaries, apparently, is available. The Chairman suggested that the matter of subsidiaries be researched empirically and discussed with the other advisory committees.

Mr. Rabiej said he would send to the Committee members copies of the comments the other advisory committees receive in response to their published drafts. Many members supported the idea of going beyond the scope of the proposals made by the other advisory committees, but the Chairman cautioned that the Committee should not extend the rule without a good reason.

Judge Walker raised the problem of compliance that a small town collection lawyer for a large national bank might face under the draft rule. The local lawyer would not have the information that needed to be disclosed, and, even when the information were available, it would not be economical or efficient to require the same document to be filed in the many tens of motions for relief from stay filed on behalf of a large national creditor by its local counsel. He suggested that the Committee provide for some alternate method of compliance to cover the small town/big bank situation.

The Committee recommitted the matter to the subcommittee with instructions to present a new draft reflecting the above discussion at the March 2001 meeting.

Rule 3015. The Reporter introduced the proposed amendment. The intent of the proposal was to relieve the clerk of the expense of mailing each chapter 13 debtor's plan to creditors or, if the plan is not filed with the petition, of mailing two notices, as well as the plan.

A second rationale was to afford creditors the benefit of the full plan in those jurisdictions that substitute a summary of the plan in the notice of the confirmation hearing, all as part of the initial notice of the filing of the case and meeting of creditors. The summary must be very brief to fit on the notice and rarely provides meaningful information about the terms of the plan. A member commented that the complete plan would be available on the Internet in a court that either accepted filings electronically or scanned all paper documents. Another said there did not appear to be any reason to impose the additional cost of mailing the plan on the debtor. The Reporter indicated that there did not appear to be any demand for the amendment beyond the clerk who had requested it. **A motion to take no action was unopposed.**

Rule 2002(h). The Reporter introduced the proposal, which would permit a court in a chapter 12 or chapter 13 case to cut off notices to any creditor who had not filed a timely proof of claim. Rule 2002(h) already permits the cessation of notice in a chapter 7 case to any creditor who has not filed a timely proof of claim. The proponent of the suggested amendment had noted that the Bankruptcy Code had been amended to add late filing as a ground for disallowance of a claim in a chapter 13 case and advocated an extension of the chapter 7 rule on that basis. The Reporter said the statutory change only made a late-filed claim subject to objection, not disallowed automatically. He said there may be further reasons not to amend the rule, most importantly the likelihood that an event affecting the creditor may occur late in the case, such as conversion to chapter 7. **A motion to leave the rule unchanged was unopposed.**

Fraudulent Service of Pleadings/Altered Bar Coding of Zip Codes. After discussion, the **consensus was that the problem described could not be solved by rule, and the Committee would take no action.**

Information Items

Technology Subcommittee. Judge Cristol reported that he and Judge Donald had conferred by telephone and had concluded that the most important technological issue is the one already discussed by the Committee in another context -- that of individual privacy in the context of bankruptcy case files being available on the Internet. He said the subcommittee members had many questions but no answers on this issue. He added that Judge Donald's law clerk is one of the authors of an article titled "Privacy in the Federal Bankruptcy Courts" published in the current issue of the Notre Dame Journal of Law, Ethics & Public Policy, copies of which he had distributed at the meeting. In addition, he said, the spread to all the courts of the judiciary's new Case Management/Electronic Case Files project would raise for the Committee's consideration many provisions in the rules that might either be amended or reinterpreted in an electronic environment. Judicial Conference approval of a policy, supported by the Committee, to encourage each court to publish its local rules on a website, is a very positive step, he said.

Federal Judicial Center Activities. Mr. Niemic referred the Committee to the update in the agenda book on the FJC's project to collect information about various forms of electronic and digital evidence to assist judges in assessing their admissibility and to evaluate the need for rules

changes to accommodate these new forms of evidence. He noted that, although the project encompasses all federal trial courts, it is being directed by Beth Wiggins, who formerly worked with the Committee, and that a bankruptcy judge is a member of the advisory committee for the project.

In addition, he said, Ms. Wiggins is in the process of updating a table originally developed in 1995 showing how bankruptcy courts had reacted to the 1993 amendments to Rule 26 of the Federal Rules of Civil Procedure, in particular, those courts which had opted out of the mandatory disclosure and pre-hearing meeting requirements. On December 1, 2000, he noted, the 1993 authorization for opting out will be withdrawn as new amendments take effect. The updated table was not yet complete, he said, but Ms. Wiggins had provided copies showing as much current information as she had available for the meeting. Copies of the completed table would be mailed to the Committee about one month following the meeting, he said.

A member asked how the amendments to Rule 26 would affect bankruptcy proceedings. Professor Resnick responded that the amended rule would be incorporated by reference as Rule 7026 and would apply in adversary proceedings. With respect to contested matters, he said, Rule 9014 states that Rule 7026 applies in contested matters "unless the court orders otherwise." It is an open question, he said, whether the phrase "unless the court orders otherwise" authorizes a court to adopt a local rule opting out of Rule 7026 in contested matters. The Chairman said those contested matters that resemble civil litigation should be governed by the amended Rule 26, which will bring significant changes also to the many district courts that opted out under the 1993 amendments.

Administrative Matters

Judge Small greeted the Committee by telephone during the September 22 session and said he looked forward to working with the members over the next three years. He expressed regret that he was unable to attend the meeting in person.

Judge Duplantier referred the Committee to the list of subcommittees and their members in the meeting agenda book and noted that many vacancies will occur due to expiring terms. He suggested that members discuss their subcommittee preferences with Judge Small, who would be making the needed appointments.

Judge Duplantier closed the meeting by thanking the Committee members and staff for both their work and their friendship over the years. He said his experiences with the Committee had been among the most pleasurable of his career.

The Committee selected September 13 - 14, 2001, as the dates for its next fall meeting and discussed several West Coast locations as possible meeting sites.

Respectfully submitted,

Patricia S. Ketchum



2-4

Agenda Items 2 - 4

will be oral presentations

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: WRITTEN COMMENTARY AND TESTIMONY
ON PROPOSED AMENDMENTS TO RULE 2014

DATE: FEBRUARY 26, 2001

Prior to the week of the public hearing on the proposed rules amendments, we had received seven comments on the proposed amendments to Rule 2014 governing the employment of professionals. One of the comments, offered by Judge Mannes (Comment #006), simply questioned why the statement is “transmitted” to the United States trustee rather than filed. The remaining six comments addressed the substance of the proposal.

The six remaining comments were split evenly in favor of and opposed to the proposed amendment to Bankruptcy Rule 2014. Richard Friedman, Esq., an Assistant United States trustee (Comment #001), Hon. Carolyn Dineen King (5th Cir.) (Comment #007), and Prof. Todd Zywicki, George Mason University School of Law (Comment #011), each found the existing Rule 2014 superior to the proposed amendment. Leon Forman, Esq., an attorney in private practice in Philadelphia (Comment #005), Robert Greenfield, Esq., on behalf of the National Bankruptcy Conference (Comment #010), and Judith Greenstone Miller, Esq., on behalf of the Commercial Law League (Comment #008), filed comments generally in support of the proposed

amendment of Rule 2014.

Initial Comments in Opposition to the Proposed Amendment (Previously reported on in January 23, 2001, Memorandum to Advisory Committee)

Mr. Friedman (Comment #001) argued that the proposed rule places too much discretion in the professional seeking employment. He noted several times that the amendment would discourage professionals from fully disclosing interests and facts that might lead a court to deny the requested employment. He also asserts that permitting the professional to make a statement based on “the best of that person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” unnecessarily duplicates Rule 9011 and improperly offers “comfort to those who file applications under intense time pressure and with little genuine inquiry....”

Judge King (Comment #007) noted first that the proposed rule would eliminate the professional’s obligation to disclose connections to parties in interest. Moreover, she stated, the proposal “commits to the proposed professional important decisions regarding the relevance and materiality of certain information.” Judge King also argued that the complexities of the relationships among lenders and their advisors, nationally and internationally, creates significant potential for conflicts. Moreover, these relationships might render the professional ineligible at some time later in the case. Judge King asserted that the professional is less likely than the court to recognize the potential for conflicts to arise by virtue of these relationships. Given the severity of the consequences to the case in the event that a professional must be discharged during the pendency of the case, Judge King believes that the court should have available to it the most information possible. She believes that the amendment would result in less rather than more

information being provided to the court.

Prof. Zywicki's position (Comment #011) is similar to the position stated by Judge King. That is, the existing rule is preferable to the amendment because the amendment puts too much discretion in the hands of the professional seeking employment. In Prof. Zywicki's view, the current rule provides an appropriate balance against the natural tendency of people to "interpret ambiguous facts in a manner most favorable to" themselves. He also argues that requiring more disclosure than might appear to be required by the Bankruptcy Code is proper and necessary "to ensure the efficient operation of and public confidence in the bankruptcy system." He further asserts that modern conflict checks identify all connections, and not just those that the professional believes are relevant and material. Disclosing these connections would not increase the administrative burden on the professional and would permit the bankruptcy judge to make the determination that the professional is disinterested.

Initial Comments in Support of the Proposed Amendment (Previously reported on in January 23, 2001, Memorandum to Advisory Committee)

Mr. Forman (Comment #005) considers the proposal to be "a marked improvement over the existing rule." He did suggest that the rule should require disclosure of "materially" adverse interests rather than simply "adverse" interests. Finally, he suggested including in the rule a mechanism to ensure that the court is made aware of any supplemental statement filed by a professional.

Mr. Greenfield (Comment #010), on behalf of the National Bankruptcy Conference, supports adoption of the proposed amendment. He did suggest that the proposal be modified to clarify that the rule is limited to the employment of professionals and is not available to authorize

the employment of a person who is a partner of the applicant but who is not himself or herself a professional.

Ms. Greenstone Miller (Comment #008), on behalf of the Commercial Law League, did not state a specific position in favor of or in opposition to the proposal. Nonetheless, the comments she offered were addressed to only one aspect of the proposed rule, and it seems a fair reading of her comments that the remainder of the changes to the rule are acceptable.

Specifically, she argued that the requirement that the professional “undertake an affirmative inquiry to determine whether employment is permitted,” may create a “trap for the unwary” who conduct an insufficient inquiry, especially when viewed in hindsight. Interestingly, her concern that professionals can be unfairly burdened by the requirement that the professional make the statement based on “knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” is the same language that Mr. Friedman found to be an inappropriate safe harbor for those same professionals.

Commentary Received At or After Public Hearing

We have received several additional written comments on the proposed amendments to Rule 2014 since the earlier report setting out and describing the comments received prior to the public hearing. Hon. Edith H. Jones (5th Cir.) (Comment #012) submitted a letter and a portion of the Final Report of the National Bankruptcy Review Commission to express her opposition to the proposal. Hon. Albert E. Radcliffe, on behalf of the Conference of Chief Bankruptcy Judges of the Ninth Circuit (Comment #014), indicated that group’s wholehearted support of the amendment to Rule 2014. Louis W. Levit, Esq., a bankruptcy practitioner in Chicago (Comment #019), generally supported the proposal and offered some suggested additional

amendments to the Rule. Joseph A. Guzinski, Esq., Acting General Counsel, submitted lengthy comments on behalf of the United States Trustee Program (Comment #020) in opposition to the proposed amendments, and offered modifications to existing Rule 2014. Finally, the Insolvency Committee of the Business Law Section of the State Bar of California (Comment #024a) generally supported the proposed amendments to Rule 2014 and offered a suggestion for further reform of the rule.

COMMENTS IN OPPOSITION TO THE PROPOSED RULE

Judge Jones asserts that the proposed amendments will dilute the current disclosure requirements and will unduly hinder the courts and the United States trustees in their efforts to monitor and maintain the integrity of the process of the appointment of professionals in bankruptcy cases. She noted as well the consideration of this issue by the National Bankruptcy Review Commission on which she served. In particular, she stated that the Commission ultimately resolved not to recommend any amendment to the definition of disinterestedness in the Bankruptcy Code notwithstanding the initial recommendation of a Working Group of the Commission that a change was in order.

Judge Jones commented that the proposed deletion of the “all connections” disclosure in the revision to Rule 2014 would diminish the ability of the United States trustee “to scrutinize possible conflicts of interest.” She states also that eliminating the disclosure of all connections would “place responsibility for determining the existence of a professional’s adverse interests and relevant interest almost exclusively in the hands of that applicant for professional employment.” While it is certainly true that under the revision to Rule 2014 the professional

must include this information in the statement required under subdivision (b) of the Proposed Rule, the court ultimately decides whether any relationship renders the professional ineligible for employment. Moreover, even under the current Rule, the professional must submit a verified statement setting out the connections with the debtor, creditors, and other parties in interest (as well as connections to the attorneys and accountants for those entities). In making those disclosure decisions, the professional currently must make “relevancy” decisions. (See the discussion of the testimony at the Public Hearing, *infra.*). Thus, the Proposed Rule does not add a “relevancy decision” made exclusively by the professional to the disclosure process. Instead, it continues the obligation that the applicants and professionals must provide to the court (and the United States trustee) the information on which to base the disinterestedness decision.

The United States Trustee Program takes a position similar to that espoused by Judge Jones. That is, current Rule 2014 is superior to the proposed revision because it requires more complete disclosure of connections that the professional has than would be required under the Committee’s proposal. Moreover, the new rule would put the professional in the position of determining which connections are relevant thereby depriving the court and United States trustee of the opportunity to evaluate the connections and reach their own conclusions regarding whether the professional is disinterested. Like Judge Jones, the United States Trustee Program asserts that the proposed amendment “shifts the evaluation of the professional’s connections from the court and the parties in interest to the professional making the application.” United States Trustee Program Comment, p.8. Earlier in its comment, the Program noted that the current rule requires the disclosure of connections that are “irrelevant or trivial.” Comment at p. 5, *quoting In re EWC, Inc.*, 138 B.R. at 280. Later in the Comment, however, the Program asserts that the

professional has “a duty of complete disclosure of all *relevant* facts bearing upon their eligibility for appointment.” Comment at p. 7 (emphasis added). Indeed, the Comment further quotes the Ninth Circuit which stated that “[a]ll facts that may be *pertinent* to a court’s determination of whether an attorney is disinterested or holds an interest adverse to the estate must be disclosed.” Id. (emphasis supplied in Comment).

While the Program opposes the proposed amendments, its comment asserts at several points that professionals should be required to disclose any and every connection they may have with the debtor, creditors, and the United States trustee, at the least. Intermittently, the Comment states that this disclosure must include even connections that are not relevant to determining whether the professional is disinterested. The Program offers no reason for the disclosure of information that is not relevant. Instead, the Program argues that the proposed rule reverses the current rule by allowing the professional to dispense with disclosing connections “[i]f the professional determines that he or she has no interests adverse to the estate, or no interests, connections, or relationships relevant to disinterestedness.” Comment at p. 8. Under the current law, “over-disclosure” is preferable to ensure that the court has access to all necessary information to determine whether the proposed employment is proper. The argument presented by the Program is accurate in stating that the court must determine whether a professional is disinterested, but its argument fails to acknowledge that even under the current rule, the professional must first make that same determination. The professional must decide that he or she is disinterested before taking on the case. Certainly, the court must reach its own conclusion that the professional meets the minimum standards for appointment, and the professional’s conclusion on that issue carries no weight of its own. That is not to suggest that the professional

does not have the obligation to make that determination at the beginning of the representation and even before the case is commenced or the application for employment of the professional is filed.

The Program also noted that the failure of professionals to disclose connections can result in the denial or disgorgement of fees in the case, though the Comment cited Prof. Zywicki's article describing that power as a "paper tiger" given its infrequent use. In that article, Prof. Zywicki asserts that the "low likelihood of detection and the mild nature of the sanctions which might result from the failure to disclose [connections is likely to cause] a loosening of the substantive standards for disinterestedness [resulting] in professionals shirking their duties to disclose fully." Todd J. Zywicki, *Mend It, Don't End It: The Case for Retaining the Disinterestedness Requirement for Debtor in Possession Professionals*, 18 Miss. C. L. Rev. 291, 296 (1998). Neither the United States Trustee Program nor Prof. Zywicki supply any direct support for that position. Indeed, it would seem as likely that a professional (and the professional's firm) would be especially reluctant to undertake employment in a significant matter if the possibility exists that the entire fee earned in the case can be forfeited. Here again, however, there is no independent evidence that either consequence is more likely than the other.

The United States Trustee Program also suggests deleting subdivision (b)(5) of the proposed rule. That provision requires attorneys to disclose the information required by § 329(a) of the Code. As the Program points out, attorneys for the debtor must file such a statement under Rule 2016(b), so adding that as a required disclosure in Rule 2014 could be confusing.

COMMENTS IN FAVOR OF THE PROPOSED RULE¹

In addition to the generally favorable comments previously described, we also received favorable commentary from Louis Levit, Esq. (Comment #019), and the Insolvency Law Committee of the Business Law Section of the State Bar of California (Comment #024a). For example, Mr. Levit noted that the “Preliminary Draft is a marked improvement over the existing Rule,” but he suggested that two refinements of proposed subdivisions and the addition of a third subdivision to improve the proposed rule. The Insolvency Law Committee viewed the proposed rule as “generally desirable,” but suggested that the rule be amended to protect professionals who undertake their conflict checks in good faith. A more complete description of their positions follows.

Mr. Levit praised the proposal as eliminating the obligation of professionals to “conduct searches and submit disclosures far beyond what is needed to determine whether the professional is free from any material adverse interest and/or actual or potential conflict of interest.” Notwithstanding his general support, Mr. Levit proposed that the professional’s statement under subdivision (b) be limited to disclosing any “material” interest that is adverse to the estate, rather than any interest that is adverse. He recognized the problem presented by § 327 which bars employment of a professional holding or representing any adverse interest, but he opined that disclosure of immaterial adverse interests or litigation over the failure to make such disclosures is not in the best interests of the public or the bankruptcy process.

Mr. Levit also suggested that the disclosure of any relationship with the United States

¹These Comments include those unequivocally in favor of the proposed rule as well as those generally in favor of the rule but which offered suggestions for improving the proposal.

trustee exclude disclosure of “such relationships as are inherent in the representation of a trustee, committee, or other entity in bankruptcy cases pending in that region, and/or in serving on the panel of trustees or as a trustee or examiner in that region.” It would not seem too burdensome, however, for professionals seeking employment under the rule to include a statement indicating their service on a panel of trustees or otherwise as set out in Mr. Levit’s proposal. Thus, while the argument that this type of “relationship” with the United States trustee is unlikely to raise concerns among the court and the parties in interest in a case, the disclosure burden seems relatively minor.

Mr. Levit also proposed adding another disclosure requirement for professionals. He would require the professional to submit “a concise summary of the procedures followed and the investigation made in obtaining the information set forth in the foregoing statement.” In Mr. Levit’s view, the proposed rule, with the amendments he suggests, would alleviate the need to disclose information that does “not involve even an arguable conflict or permit any possible inference of impropriety,” while continuing to ensure the submission of information “more than adequate to enable the Court to make its own informed decision as to the professional’s eligibility.”

The Insolvency Law Committee of the State Bar of California stated that it opposes the rule unless it is amended. The amendment that the Insolvency Law Committee seeks is one that would protect professionals against court sanctions such as the disgorgement of earned fees if the professional conducted a search for conflicts of interest “in good faith and in accordance with customary practice.” While Mr. Levit does not posit a safe harbor for professionals who set out the scope of their conflict check and investigation, his suggestion that the professional’s

statement include the description is not dissimilar from the proposal of the Insolvency Law Committee. In each instance, having the information regarding the scope of the search and investigation would allow the court, the United States trustee, and other parties in interest to evaluate the professional's effort to determine their eligibility for employment, and those parties could object to the proposed employment on the grounds that the search was insufficient, even if a more complete search would not have disclosed any irregularity. This would seem to encourage complete searches.

The Insolvency Law Committee asserted that the lack of definitions for "relationships, connections, and interests" for which the rule requires disclosure puts the professional in a position where the employment can be "second-guessed" based on facts of which the professional was unaware notwithstanding a good faith effort to comply with the disclosure requirements. The Committee does not, however, indicate whether the professional whose employment is later determined to be improper should continue to serve in the case.

Notwithstanding these stated objections to the proposal, the Committee's position seems to be that professionals are unduly vulnerable to sanctions such as the disgorgement of fees when they conduct appropriate conflict checks and conclude in good faith that particular connections or relationships need not be disclosed. Since the proposed rule narrows the scope of information that must be disclosed, it would seem that the Committee would prefer the proposed rule over the current rule.

Testimony at the Public Hearing

Judge Small presided at the public hearing on the proposed rules amendments held in Washington, D.C., on January 26, 2001. Four witnesses were scheduled to testify, but Judith

Greenstone Miller, Esq., was unable to attend. Judy B. Calton, Esq., testified in place of Ms. Greenstone Miller. Her testimony was offered on behalf of the Commercial Law League (for Ms. Greenstone Miller), and on behalf of Committees of the State Bar of Michigan and the Detroit Metropolitan Bar Association. Robert Greenfield, Esq., testified on behalf of the National Bankruptcy Conference. The final testimony was offered by Prof. Todd Zywicki of George Mason University School of Law.

Ms. Calton and Mr. Greenfield both spoke generally in favor of the proposed rule. Ms. Calton noted that in her experience, it is sometimes difficult, if not impossible to identify all of the connections a large law firm might have with creditors of the debtor. The list of creditors may not even include the correct name of a creditor (perhaps using a trade name of the creditor). When the problem is multiplied by a large number of attorneys in a firm and a substantially larger number of creditors in a case, the difficulties are increased exponentially. Mr. Greenfield expressed some surprise that comments on the proposed rule expressed concern that professionals would withhold information in order to gain employment when they are not otherwise eligible. In his view, professionals likely would continue to “overdisclose” to protect against the risk that a judge would ultimately conclude that the employment was improper and all fees should be returned.

Prof. Zywicki reiterated his position as explicated in his written comment and his law review article that was attached to the comments. He expressed concern that the proposed rule would not require disclosure of more information than the amount minimally required under the Code. He asserted that the rules create an obligation for professionals independent of the obligations established by the Code which should be maintained. Prof. Resnick and Prof.

Zywicki engaged in a discussion of hypothetical situations regarding the need to disclose specific “connections” under current Rule 9014. For example, must a professional disclose that he has an outstanding (though not overdue) charge of \$20 for a dinner he purchased on a credit card issued by an entity that is a creditor in a case in which the professional seeks authorization to serve as counsel to the debtor? Prof. Zywicki did not believe that this information needed to be disclosed, although he did recognize that it was a “connection” with a creditor. The discussion then shifted to an attempt to craft language, or even a concept, that would require the inclusion of all information necessary for the courts and third parties to reach a conclusion as to the propriety of the appointment of a professional in a case. No solution was reached by the end of the testimony.

REVISIONS TO PROPOSED RULE 2014 TO REFLECT PUBLIC COMMENTS AND TESTIMONY

Given the commentary and public testimony received on the Preliminary Draft of the Proposed Amendment to Rule 2014, I believe that at least two specific changes might be made to the Rule and Committee Note. First, the Committee Note should be expanded to provide a more complete description of the reasons for the revision. In particular, the Committee Note should state that the revision is intended, *inter alia*, to delete the requirement that the professional set out every connection he or she has, whether or not relevant, with all of the debtor’s creditors as well as the attorneys and accountants of those creditors. The Note can provide a brief hypothetical demonstrating the unwieldy and unnecessary conflict searches that naturally follow from such a broad rule. The Note should thereafter remind the reader, however, that the new disclosure requirements do not operate to substitute the judgment of the professional seeking employment

for the judgment of the court that approves the employment. Moreover, other parties in interest, including creditors and the United States trustee, should still receive all of the information necessary for them to determine whether to oppose the proposed employment. A more detailed description in the Committee Note may be sufficient to address the concerns of several persons who perceived the Proposed Amendments to the rule as unduly easing the disclosure obligations of the professional as well as causing a shift in the determination of the propriety of the employment from the court to the applicant.

The Rule can also be improved by requiring the professional to set out in the statement the scope of the conflict search conducted. This is already a common practice in some courts, and requiring the professional to include this information in the statement better enables the United States trustee and creditors to evaluate the professional's good faith in preparing the statement. It should also be helpful to the court in its review of the application. This provision can be inserted in place of subdivision (b)(5) which, as proposed, requires the professional who is an attorney to disclose information that is already covered by Rule 2016(b).

Thus, the rule, as revised from the version published in August, would be unchanged except for the substitution of a new subdivision requiring the description of the scope of the conflict check that the professional undertook in place of the subdivision requiring the § 329 statement. The deletion of (b)(5) from the published version of the rule is denoted by the strikethrough format below. The following version of the rule also includes the expanded Committee Note as described above.

Rule 2014. Employment of a Professional Person.

1 (a) APPLICATION FOR ORDER APPROVING
2 EMPLOYMENT. An application for an order approving the
3 employment of a professional person under §327, §1103, or §1114
4 of the Code shall be in writing and may be made only by the trustee
5 or committee. The application shall state:

6 (1) specific facts showing why the employment is
7 necessary;

8 (2) the name of the person to be employed and the
9 reasons for the selection;

10 (3) the professional services to be rendered;

11 (4) any proposed arrangement for compensation; and

12 (5) that, to the best of the trustee's or committee's
13 knowledge, the person to be employed is eligible under the Code
14 for employment for the purposes set forth in the application.

15 (b) STATEMENT OF PROFESSIONAL. The application
16 shall be accompanied by a verified statement of the person to be
17 employed, made according to the best of that person's knowledge,
18 information, and belief, formed after an inquiry reasonable under
19 the circumstances, which shall state:

20 (1) that the person is eligible under the Code for
21 employment for the purposes set forth in the application;

22 (2) any interest that the person holds or represents that
23 is adverse to the estate;

24 (3) any interest, connection, or relationship that the
25 person has relevant to determining whether the person is
26 disinterested under § 101;

27 (4) any relationship the person has with the United States
28 trustee, or with any employee of the United States trustee, for the
29 region in which the case is pending;

30 (5) the information required to be disclosed under
31 §329(a) if the professional is an attorney; and the procedures
32 followed and the investigation made in preparing the statement;
33 and

34 (6) whether the person shared or has agreed to share
35 any compensation with any person, other than a partner, employee,
36 or regular associate of the person to be employed, and if so, the
37 details.

38 (c) SERVICE AND TRANSMITTAL OF APPLICATION.

39 (1) The applicant shall serve a copy of the application on:

40 (A) the trustee;

41 (B) the debtor and the debtor's attorney;

42 (C) any committee elected under §705 or appointed

43 under § 1102, or, if the case is a chapter 9 case or a chapter 11 case
44 and no committee of unsecured creditors has been appointed, on
45 the creditors included on the list filed under Rule 1007(d); and

46 (D) any other entity as the court may direct.

47 (2) Unless the case is a chapter 9 case, the applicant
48 shall transmit a copy of the application to the United
49 States trustee.

50 (d) SERVICES RENDERED BY MEMBER OR ASSOCIATE
51 OF FIRM OF EMPLOYED PROFESSIONAL. If the court
52 approves the employment of an individual, partnership, or
53 corporation, any partner, member, or regular associate of the
54 individual, partnership, or corporation may act as the person so
55 employed, without further order of the court. If a partnership is
56 employed, a further order approving employment is not required if
57 the partnership has dissolved solely because of the addition or
58 withdrawal of a partner.

59 (e) SUPPLEMENTAL STATEMENT OF
60 PROFESSIONAL. Within 15 days after becoming aware of any
61 undisclosed matter that is required to be disclosed under Rule
62 2014(b), a person employed under this rule shall file a
63 supplemental statement, serve a copy on each entity listed in Rule

2014(c), and, unless the case is a chapter 9 case, transmit a copy to the United States trustee.

COMMITTEE NOTE

The rule has been rewritten to make stylistic changes and to make it conform more closely to the applicable provisions of the Code. The rule directs professionals seeking court approval of their employment to disclose all information relevant to determining whether the person is “disinterested” as defined in § 101 of the Code. It no longer requires the professional to disclose every connection to a creditor or an attorney or accountant for the debtor, whether or not such connection is relevant or material. Thus, the rule would not require a disclosure that an associate in the firm representing the debtor is the holder of a life insurance policy issued in the ordinary course of business by a creditor of the debtor. Similarly, the professional need not disclose that a member of the firm maintains a personal checking account with a bank that is a creditor in the case. Such disclosures would not assist the court in determining whether to approve the employment, yet they are connections with a creditor in the case.

While the rule requires the professional to make an initial determination that a particular connection is or is not relevant to a determination of disinterestedness, this is not a change from the prior rule. Professionals still must determine whether a particular connection is relevant to that determination, but the court continues to make the final determination. Furthermore, the rule requires the professional to undertake a reasonable inquiry under the circumstances to identify any facts relevant to that determination. The court still makes the ultimate determination as to whether the employment is proper under the circumstances. Professionals who, in the court’s view, fail to include all relevant connections, face the possibility of court imposed sanctions for that failure, including the disgorgement of fees.

The rule also sets out the service requirements for the application for the approval of employment. There is no provision requiring a hearing on the application. In most cases, an order approving the employment will be entered without a hearing. The court may set a hearing sua sponte or on request or may vacate an

order issued under the rule upon motion of an interested party.

The rule does not address the standards that courts should apply in ruling on an application for employment of a professional.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: FURTHER ALTERNATIVE TO PROPOSED RULE 2014
DATE: FEBRUARY 27, 2001

Given the opposition to the proposed amendments to Rule 2014, the Committee may wish to consider an alternative to the foregoing proposal. Much of the concern expressed in the public comments and testimony on the proposal relates to the provision requiring the professional to set out the connections held that are relevant to a determination of disinterestedness under § 101(14)(E) of the Code. That section refers to connections with the debtor and certain investment bankers, but it does not include “connections” to creditors or their attorneys or accountants as set out in current Rule 2014. Our published Preliminary Draft was intended to delete the requirement to disclose all of these “creditor connections” except to the extent that they are relevant to the disinterestedness determination.

The dual concern expressed about the proposed rule was that it would offer cover for those who would intentionally interpret “relevant connections” narrowly to deprive the courts and parties in interest of the information necessary to evaluate the propriety of the proposed employment, and that the rule, regardless of the professional’s interpretation, would no longer require greater disclosure than the statute itself requires. A middle ground to avoid requiring the disclosure of substantial amounts of irrelevant information may be to limit the disclosure of all

connections to the disclosure of all connections to the debtor, the “§ 101(14)(E)” investment bankers, and creditors. This would relieve the professional from listing all connections to the attorneys and accountants of those creditors. Furthermore, the disclosure of creditor connections that are of little or no relevance could be accomplished through a general disclosure. For example, using the hypothetical “connection” offered in the Committee Note, the law firm could include a disclosure that some members or associates of the firm may hold life insurance policies issued by a creditor in the ordinary course of its business. A similar general disclosure could be made as to personal banking practices of the professional and others in the firm. If, however, the firm had a special relationship in which the bank offered discount rates to employees of the firm for banking services, more complete disclosure would be required. It does not seem likely that the rule could include such specific direction, but the Committee Note could be changed to reflect these views.

The following is a suggested amendment to meet these concerns and is offered for the Committee’s consideration. The only change to the rule as set out in the foregoing report would be to insert a new subdivision (b)(3) into the rule and to renumber current (b)(4) through (b)(6) as (b)(5) through (b)(7).

RULE 2014. Employment of a Professional Person

(b) STATEMENT OF PROFESSIONAL. The application shall be accompanied by a verified statement of the person to be employed, made to the best of that person’s knowledge, information, and belief, formed after an inquiry reasonable under

6 the circumstances, which shall state:

7 *****

8 (3) any interest in, relationship to, or connection the person
9 has with

10 (A) the debtor;

11 (B) any investment banker for any outstanding security
12 of the debtor, and any investment banker, or attorney of
13 such investment banker that acted in connection with
14 the offer, sale, or issuance of a security of the debtor
15 within three years before the filing of the petition; and

16 (C) any creditor;

17 (4) any connection that the person has to the attorneys or
18 accountants of any creditor relevant to a determination that
19 the person is disinterested under §101;

20 (5) any relationship the person has with the United States
21 trustee, or with any employee of the United States trustee,
22 for the region in which the case is pending;

23 (6) the procedures followed and the investigation made in
24 preparing the statement; and

25 (7) whether the person shared or has agreed to share any
26 compensation with any person, other than a partner,

27 employee, or regular associate of the person to be

COMMITTEE NOTE

The rule has been rewritten to make stylistic changes and to make it conform more closely to the applicable provisions of the Code. The rule directs professionals seeking court approval of their employment to disclose all interests in, relationships to, and connections with the debtor, certain investment bankers of the debtor, and creditors. The professional also must disclose connections with attorneys and accounts of creditors if that information is relevant to determining whether the professional is “disinterested” as defined in § 101 of the Code. It no longer requires the professional to disclose every connection to a creditor’s attorney or accountant. Thus, the rule would require a disclosure that an associate in the firm seeking to represent the debtor is the holder of a life insurance policy issued by a creditor of the debtor. Such a disclosure could be accomplished by noting that some members or associates of the firm may be holders of insurance policies issued in the ordinary course of the business of the insurance company that is a creditor in the case. The professional would have to disclose a connection with the attorneys or accountants for that creditor only if the connection is relevant to determining whether the professional is disinterested.

While the rule requires the professional to make an initial determination that a particular connection is or is not relevant to a determination of disinterestedness, this is not a change from the prior rule. Professionals still must determine whether a particular connection is relevant to that determination, but the court continues to make the final determination. Furthermore, the rule requires the professional to undertake a reasonable inquiry under the circumstances to identify any facts relevant to that determination. The court still makes the ultimate determination as to whether the employment is proper under the circumstances. Professionals who, in the court’s view, fail to include all relevant connections, face the possibility of court imposed sanctions, including the

disgorgement of fees, for that failure.

The rule also sets out the service requirements for the application for the approval of employment. There is no provision requiring a hearing on the application. In most cases, an order approving the employment will be entered without a hearing. The court may set a hearing sua sponte or on request or may vacate an order issued under the rule upon motion of an interested party.

The rule does not address the standards that courts should apply in ruling on an application for employment of a professional.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: WRITTEN COMMENTS ON PRELIMINARY DRAFT OF AMENDMENTS
TO RULE 9014

The proposed amendments to Rule 9014 drew more comments than any other proposed amendments. Six different Bankruptcy Judges in the Ninth Circuit offered comments in opposition to the proposal, including comments submitted on behalf of the Chief Bankruptcy Judges of the Ninth Circuit, on behalf of the Bankruptcy Judges of the Central District of California, and on behalf of the Local Rules Committee of the Western District of Washington. Several other organizations and a Bankruptcy Judge's law clerk also raised questions regarding the proposal. Only the comment submitted by the Committees on Federal Courts and Bankruptcy and Reorganization of the Association of the Bar of the City of New York supported adoption of the proposal. Nearly all of the comments addressed Rule 9014(d), while several offered commentary on Rule 9014(e).

Comments on Rule 9014(d)

Nearly all of the comments urged that the current rule be retained, or that an amendment be drafted to provide the courts with discretion to permit the use of affidavits in the resolution of contested matters. In particular, a number of the comments noted that affidavits are frequently used for the direct testimony of expert witnesses (especially for appraisers of real estate), subject to the right of the opposing party to conduct live cross examination of the witness. The Ninth

and Second Circuits have specifically authorized this practice. In re Adair, 965 F.2d 777 (9th Cir. 1992); Ball v. Interoceanica Corp., 71 F.3d 73 (2d Cir. 1995).

The primary argument offered by those opposed to the amendment was that the rule would unduly restrict the courts' ability to resolve recurring matters such as stay relief motions and objections to confirmation of Chapter 13 plans in the most efficient manner possible. They noted that requiring a hearing with live testimony will be expensive for all of the parties. Even if a debtor does not offer testimony other than his or her own, the costs incurred by the creditor in preparing and putting on the testimony frequently is chargeable to the debtor under the terms of the prebankruptcy agreement between the parties. Furthermore, many of the comments from both attorneys and judges indicated that the practices in their courts were long standing and acceptable to participants on both the debtor and creditor sides of the courtroom.

Several comments suggested that the Committee had misconstrued the application of F. R. Civ. P. 43 and confused the operation of subdivisions (a) and (e) of that rule. The Committee has been considering this issue at least since September 1999, and the distinction between those subdivisions has been discussed at length. Proposed Rule 9014(d) references Civil Rule 43(a) rather than 43(e) because contested matters are more akin to civil actions in terms of the significance of the decisions the court renders than they are to motions made within those cases. In civil actions, motions governed by Rule 43(e) generally are not comparable to motions that initiate contested matters in bankruptcy cases in that they do not result in final resolution of the underlying matter. The exceptions to this general notion are a motion for summary judgment or a motion to dismiss for failure to state a claim upon which relief can be granted. By definition, those motions do not involve the taking of live testimony. Therefore, in civil actions, Rule 43(e)

finds its primary application to motions that are not dispositive of the case.

Rule 43(a), on the other hand, governs the taking of testimony at trial. In many ways, this is much more comparable to the resolution of a contested matter in a bankruptcy case. The granting of relief from the automatic stay not only finally resolves the dispute between the debtor and the moving creditor, it may also effectively end the entire bankruptcy case if the relief involves the debtor's primary assets. The persons offering comments on this proposal did not understand that this was the Committee's reason for selecting Rule 43(a) rather than Rule 43(e) as the guiding principle for taking testimony in contested matters.

Even if the Committee's reasons for proposing Rule 9014(d) were made more clear, it does not appear that the bulk of the comments in opposition to the rule would disappear. Most of the comments assert that the use of affidavits or stipulated testimony for the presentation of direct testimony is a valuable tool for the bankruptcy courts. Indeed, these comments were echoed not just by judges and practitioners in the Ninth Circuit, but also from Texas, Michigan, and Ohio. In all of these comments, the plea was for the Committee to leave the bankruptcy courts with the flexibility to conduct these hearings in the manner they find most efficient yet fair.

The Committee has several options. It can recommend the rule for adoption by the Standing Committee in its proposed form. In lieu of recommending the presentation of the proposed rule to the Standing Committee, the Committee could reconsider the rule and attempt to list contested matters in which this type of practice is permissible or impermissible. Of course, the Committee can conclude that the proposal should not be presented to the Standing Committee and no change should be made to the current rule.

Comments on Rule 9014(e)

Several Bankruptcy Judges offered comments concerning the requirement in Rule 9014(e) that the court establish procedures to enable parties to ascertain whether it is necessary to bring witnesses to a hearing. They indicated either that their regular practice was well known so that no special notice needs to be given, or that local rules or standing orders were sufficient. The attorneys who commented on the proposal, though there were few, generally favored it. This would seem to support the Committee's position in making the proposal. Providing this information is as important to the attorney who is not from the area or who does not usually practice in the bankruptcy courts as well as for the experienced local bankruptcy practitioner.

It might be helpful to provide specifically in the rule mechanisms the courts can use to provide the notice. For example, the provision could be revised by adding the italicized language below to provide that additional guidance.

Rule 9014. Contested Matters

1
2 (e) ATTENDANCE OF WITNESSES. The court, by order or
3 local rule, shall provide procedures that enable parties to
4 ascertain at a reasonable time before any scheduled hearing
5 whether the hearing will be an evidentiary hearing at which
6 witnesses may testify.

COMMITTEE NOTE
(no change necessary)

Adopting the suggested change could be viewed as an attempt by the Committee to micro

manage the trial process. The proposal was purposely silent on the means that the courts should employ to accomplish the notification. Nonetheless, spelling out some possible means by which the courts can effect the notification may be viewed as more of a help to the courts rather than an attempt to restrict the methods they may use to conduct their hearings.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: COMMENTS AND TESTIMONY ON PRELIMINARY DRAFTS OF RULES
1004, 1004.1, 2004, 2015, 4004, and 9027

DATE: FEBRUARY 28, 2001

This memorandum describes the public comments received on the proposed amendments to Rules 1004, 1004.1, 2004, 2015, 4004, and 9027 and Official Form 1. Given the volume and scope of the comments received on the proposed amendments to Rules 2014 and 9014, those rules and the comments thereon are considered in a separate report. The comments received on the rules addressed in this memorandum were relatively limited and generally did not include suggestions for the revision or deletion of the proposals.

Rule 1004

Ms. Patricia Meravi of the Clerk's Office in the Bankruptcy Court for the District of New Jersey submitted the only comment received regarding Rule 1004 (Comment #013). She did not raise any substantive objection, but instead suggested that the rule, along with Rule 1004.1, be renumbered or otherwise reconfigured to avoid the use of an "extender" for Rule 1004.1. She asserted that the extender can be misleading to readers, particularly given the requirement that the local rules be numbered with an extender to correspond to the applicable national rule. Given the lack of substantive comment on the proposal, I recommend that the Committee forward the rule to the Standing Committee for its approval and presentation to the Judicial Conference.

Rule 1004.1

In addition to Ms. Mearvi's comment discussed above, Hon. Paul Mannes (Bankr. D. Md.) raised two issues regarding proposed Rule 1004.1 (Comment #006). First, he suggested that either the text of the rule or the committee note include a statement that an attorney in fact holding a durable power of attorney be identified as authorized to commence a bankruptcy case on behalf of the person who granted the power. He also raised the question of funding for a guardian ad litem who would be appointed to represent the debtor. The rule is silent on the matter, and we can consider whether to address the matter in the Committee Note or otherwise.

Certainly, the rule cannot provide funding for such representation. Rule 17(c) of the F. R. Civ. P. on which Rule 1004.1 is based also does not address funding the representation of infants or incompetent persons. It is questionable whether any discussion of the matter in the Committee Note would be of assistance either to the courts or those who may be appointed under the Rule. Regarding Judge Mannes' that the rule or committee note reference certain durable powers of attorney, I do not believe that either the Rule or the Committee Note should offer examples of persons authorized to commence a case on behalf of another person. That is an issue more properly determined under applicable nonbankruptcy law. Therefore, I would not recommend any change to the proposal. Instead, I suggest that the Committee forward the Rule to the Standing Committee for its approval and presentation to the Judicial Conference.

Rule 2004

We received three comments on this rule. The Federal Courts Committee and the Bankruptcy and Corporate Reorganization Committee of the Association of the Bar of the City of New York support the proposal unequivocally (Comment #023). Hon. Frank W. Koger (Bankr.

W.D. Mo.) noted a typographical error in the draft which has since been corrected (Comment #003). Prof. Joseph Kimble, a consultant to the Style Committee of the Standing Committee, suggested a stylistic revision to the proposed rule (Comment # 002). The proposal was presented to the Standing Committee last year, and both its Style Committee and the Style Subcommittee of the Bankruptcy Rules Committee approved the form of the proposal. The changes Prof. Kimble suggests could be read to change the meaning of the proposal slightly and does not as clearly state the purpose or reach of the rule. His suggestion does pare down the length of the rule, and if the Committee believes that Prof. Kimble's language is sufficient, the change can be made and the proposal still forwarded to the Standing Committee without the need to republish the rule. In either event, I recommend that the Committee forward the Rule to the Standing Committee for its approval and presentation to the Judicial Conference.

Rule 2015

We received no comments on the proposed amendment to Rule 2015. This amendment simply implements the duty to file quarterly reports with the United States trustee. I recommend that the Committee forward the Rule to the Standing Committee for its approval and presentation to the Judicial Conference.

Rule 4004

Judge Mannes (Comment #006) submitted the only comment that referenced Rule 4004. His comment, however, was not addressed to the amendment published for comment. That amendment postpones the entry of the discharge if any motion to dismiss the case is pending. Judge Mannes suggested in his comment that debtors who fail to appear for the meeting of creditors should not be granted a discharge. Nonetheless, he stated that these debtors are

receiving a discharge because trustees are failing to file the proper motions to deny or at least delay the entry of the discharge. Debtors who fail to appear and submit to examination at the § 341 meeting of creditors violate § 343. It is not clear how an amendment to Rule 4004 or any other rule will resolve the problem Judge Mannes poses. The debtor's obligation is set out in § 343, and the rules cannot compel trustees or other parties in interest to act to enforce that obligation.

Since we received no comments on the proposed amendment to Rule 4004(c), I recommend that the Committee forward the Rule to the Standing Committee for its approval and presentation to the Judicial Conference.

Rule 9027

We received one comment on the proposed amendments to Rule 9027(a)(3). The amendment is intended to clarify that the time limits for filing a notice of removal of a claim or cause of action apply whether the underlying bankruptcy case is pending or has been closed or dismissed. Hon. Robin L. Riblet (Bankr. C.D. Cal), on behalf of the Bankruptcy Judges of the Central District of California, submitted a comment (Comment #021) asserting that the amendment may create strategic opportunities for litigants to remove state court cases to the bankruptcy courts when those actions may be only "tangentially related" to the closed or dismissed bankruptcy case. Judge Riblet noted that the bankruptcy courts already consider actions by debtors to enforce the discharge injunction after the underlying case is closed, demonstrating that the court is more than willing and able to address matters properly brought before it. The concern expressed in the comment is that the amendment will trigger a number of efforts to remove matters to the bankruptcy courts other than actions involving the enforcement

of the discharge injunction.

The purpose of the amendment is not to increase the incidences of removal of state court actions to the bankruptcy courts. Rather, it is to impose the same filing deadline for removal whether the underlying bankruptcy case is still pending or has been closed or dismissed. It does not expand or contract the jurisdiction of the bankruptcy court to hear these matters, nor does it impose any standard for the exercise of any discretion the court may have either to hear or deny hearing the matter. *See, e.g.*, 28 U.S.C. § 1334(c) (court may abstain from hearing a particular proceeding). Consequently, I do not believe that the objections raised in the comment warrant retaining the rule for further study or abandoning the proposal. Therefore, I recommend that the Committee forward the Rule to the Standing Committee for its approval and presentation to the Judicial Conference.

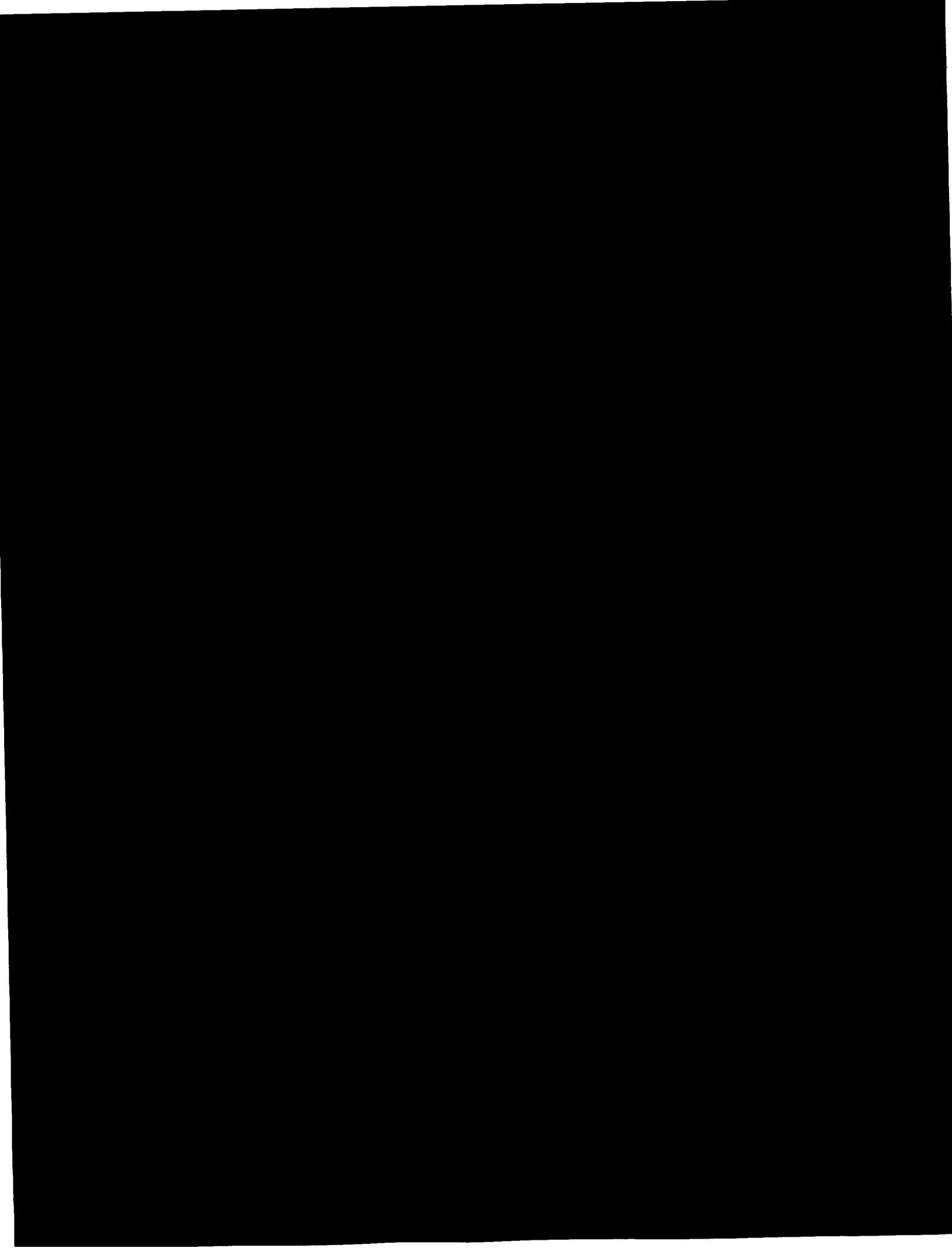
Official Form 1

The amendment to Official Form 1 adds an Exhibit C requiring the debtor to identify and describe property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety. Robert A. Greenfield, Esq., on behalf of the National Bankruptcy Conference (Comment #010), offered the only comment on this proposal. He argued that the disclosure may be viewed as a waiver of a debtor's Fifth Amendment protections against self incrimination. Short of such a waiver, he suggested that the statement could be construed as an admission against interest by agencies enforcing environmental regulations. He also questioned whether the disclosure will serve the purpose of protecting persons or property from harm. He recommended that if the Committee were to conclude that the debtor should disclose the information, it should be included in a filing made after rather than as a part of the petition. In

part, Mr. Greenfield appears to have reached this conclusion because of a concern that some clerks of courts may refuse to accept a petition if the Exhibit is not completed.

Concerns about waiver of Fifth Amendment protections necessarily are limited to individual debtors because the privilege applies only to natural persons. Thus, there is no Fifth Amendment issue relative to Exhibit C to Official Form 1 in cases commenced by a corporation or partnership. As to individual debtors, the privilege is available, and failure to invoke the privilege results in its waiver. An individual who must complete and file Exhibit C can seek immunity under § 344 of the Code. If immunity is denied, the debtor still may invoke Fifth Amendment privileges, but he or she may face the denial of a discharge under the applicable discharge provision.

The Committee has previously considered the Fifth Amendment arguments in its deliberations over this amendment to Official Form 1 and concluded that the Exhibit should be included on the Official Form. The availability of immunity under § 344 coupled with the need of panel trustees and regulatory agencies to identify and deal with situations presenting the prospect of imminent and immediate harm to the public health or safety seems to justify this addition to the Official Form. Moreover, postponing the timing of the disclosure would not change the Fifth Amendment issues, but it would delay the acquisition of the information by those persons in need of it for the protection of the public. Therefore, I recommend that the Committee forward the Official Form to the Standing Committee for its approval and presentation to the Judicial Conference.



FORM B1	United States Bankruptcy Court District of _____	Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle):		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (if more than one, state all):		Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code):		Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business:		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above):		

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Individual(s)
<input type="checkbox"/> Corporation
<input type="checkbox"/> Partnership
<input type="checkbox"/> Other _____ | <input type="checkbox"/> Railroad
<input type="checkbox"/> Stockbroker
<input type="checkbox"/> Commodity Broker |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- | | | |
|--------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> Chapter 7 | <input type="checkbox"/> Chapter 11 | <input type="checkbox"/> Chapter 13 |
| <input type="checkbox"/> Chapter 9 | <input type="checkbox"/> Chapter 12 | |
| <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding | | |

Nature of Debts (Check one box)

- Consumer/Non-Business Business

Chapter 11 Small Business (Check all boxes that apply)

- Debtor is a small business as defined in 11 U.S.C. § 101
- Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)

- Full Filing Fee attached
- Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)

- Debtor estimates that funds will be available for distribution to unsecured creditors.
- Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	<input type="checkbox"/>					

Estimated Assets							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

Estimated Debts							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

THIS SPACE IS FOR COURT USE ONLY

Exhibit "C"

[If, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit "C" to the petition.]

[Caption as in Form 16B]

Exhibit "C" to Voluntary Petition

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor's knowledge, poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

COMMITTEE NOTE

The form has been amended to require the debtor to disclose whether the debtor owns or had possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety. If any such property exists, the debtor must complete and attach Exhibit "C" describing the property, its location, and the potential danger it poses. Exhibit "C" will alert the United States trustee and any person selected as trustee that immediate precautionary action may be necessary.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: IMPACT ON BANKRUPTCY RULES AND FORMS OF ELIGIBILITY FOR
BANKRUPTCY RELIEF OF UNINSURED STATE BANKS OPERATING
MULTILATERAL CLEARING ORGANIZATIONS

DATE: FEBRUARY 28, 2001

Congress enacted the Consolidated Appropriations Act for Fiscal Year 2001 on December 21, 2000. Included in the Act were amendments to §§ 101 and 109 as well as to Chapter 7 of the Bankruptcy Code. These amendments render uninsured State banks that operate multilateral clearing organizations eligible for bankruptcy relief by means of amendments to § 109(b)(2) and (d). Several definitions in § 101 also are amended, and the Act includes a new Subchapter V of Chapter 7 of the Code. The new Subchapter governs Clearing Bank Liquidation.

Since this new category of banks is eligible for relief, Official Form 1 must be amended to include a box to be checked for that debtor identification in the square denominated **Type of Debtor**. Attached is a copy of Form 1 with this change. This amendment of the form can be made without the need for approval through the full Rules Enabling Act process.

It may also be necessary to amend two rules because of the addition to the Code of § 782(a). That section provides that “[n]otwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the

Board designates an alternative trustee.” In these cases, the Federal Reserve Board first appoints a receiver or conservator, and then can direct that receiver or conservator to file a petition under title 11. If the case proceeds under Chapter 7, it is governed by Subchapter V, including § 782 (a), and the appointment of trustees in those cases must follow that directive.

Rule 2003(b)(1) provides that the meeting of creditors may include the election of a trustee. Newly enacted § 782(a) makes such an election improper in a case under Subchapter V of Chapter 7. Therefore, the following amendment to the rule is necessary.

Rule 2003. Meeting of Creditors or Equity Security Holders

(b) ORDER OF MEETING.

(1) Meeting of Creditors. The United States trustee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath, and in a chapter 7 liquidation case, may include the election of a trustee, unless the case is proceeding under subchapter V of that chapter, or the election of a creditors committee. The presiding officer shall have the authority to administer oaths.

COMMITTEE NOTE

The rule is amended to reflect the enactment of subchapter V of chapter 7 of the Code governing multilateral clearing organization liquidations. Section 782 of the Code provides that the designation of a trustee or alternative trustee for the case is made by the Federal Reserve Board. Therefore, the meeting of creditors in those cases cannot include the election of a trustee.

A similar series of amendments are called for in Rule 2009. That rule addresses the election and appointment of trustees for estates that are jointly administered. Again, since the appointment process for trustees in cases under subchapter V of chapter 7 is in the exclusive power of the Federal Reserve Board, the rules references to the appointment of a trustee by the United States trustee or the election of a trustee by creditors is improper. The following amendment is offered to harmonize the rule with the new Bankruptcy Code provision.

1 **Rule 2009. Trustees for Estates When Joint Administration**
2 **Ordered**

3 (a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING
4 JOINTLY ADMINISTERED. If the court orders a joint
5 administration of two or more estates ~~pursuant to~~ under Rule
6 1015(b), creditors may elect a single trustee for the estates
7 being jointly administered unless the case is governed by
8 subchapter V of chapter 7 of the Code.

9 (b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE.
10 Notwithstanding entry of an order for joint administration
11 ~~pursuant to~~ under Rule 1015(b), the creditors of any debtor may
12 elect a separate trustee for the estate of the debtor as provided
13 in § 702 of the Code, unless the case is governed by subchapter
14 V of chapter 7.

15 (c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING
16 JOINTLY ADMINISTERED.

17 (1) Chapter 7 Liquidation Cases. Except in a case governed by
18 subchapter V, the United States trustee may appoint one or
19 more interim trustees for estates being jointly administered
20 in chapter 7 cases.

COMMITTEE NOTE

The rule is amended to reflect the enactment of subchapter V of chapter 7 of the Code governing multilateral clearing organization liquidations. Section 782 of the Code provides that the designation of a trustee or alternative trustee for the case is made by the Federal Reserve Board. Therefore, neither the United States trustee nor the creditors can appoint or elect a trustee in these cases.

Other amendments are stylistic.

FORM B1		United States Bankruptcy Court	Voluntary Petition
District of _____			
Name of Debtor (if individual, enter Last, First, Middle):		Name of Joint Debtor (Spouse) (Last, First, Middle):	
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):	
Soc. Sec./Tax I.D. No. (if more than one, state all):		Soc. Sec./Tax I.D. No. (if more than one, state all):	
Street Address of Debtor (No. & Street, City, State & Zip Code):		Street Address of Joint Debtor (No. & Street, City, State & Zip Code):	
County of Residence or of the Principal Place of Business:		County of Residence or of the Principal Place of Business:	
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):	
Location of Principal Assets of Business Debtor (if different from street address above):			

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Individual(s)
<input type="checkbox"/> Corporation
<input type="checkbox"/> Partnership
<input type="checkbox"/> Other _____ | <input type="checkbox"/> Railroad
<input type="checkbox"/> Stockbroker
<input type="checkbox"/> Commodity Broker
<input checked="" type="checkbox"/> Clearing Bank |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- | | | |
|--------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> Chapter 7 | <input type="checkbox"/> Chapter 11 | <input type="checkbox"/> Chapter 13 |
| <input type="checkbox"/> Chapter 9 | <input type="checkbox"/> Chapter 12 | |
| <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding | | |

Nature of Debts (Check one box)

- Consumer/Non-Business Business

Chapter 11 Small Business (Check all boxes that apply)

- Debtor is a small business as defined in 11 U.S.C. § 101
- Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)

- Full Filing Fee attached
- Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)

- Debtor estimates that funds will be available for distribution to unsecured creditors.
- Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	<input type="checkbox"/>					

Estimated Assets							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

Estimated Debts							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

THIS SPACE IS FOR COURT USE ONLY

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s):	
Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)			
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
 [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
 I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of Attorney

X _____
Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
 The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X _____
Signature of Attorney for Debtor(s) Date

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.
 No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X _____
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.

Exhibit "C"

[If, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit "C" to the petition.]

[Caption as in Form 16B]

Exhibit "C" to Voluntary Petition

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor's knowledge, poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

COMMITTEE NOTE

The form has been amended to require the debtor to disclose whether the debtor owns or had possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety. If any such property exists, the debtor must complete and attach Exhibit "C" describing the property, its location, and the potential danger it poses. Exhibit "C" will alert the United States trustee and any person selected as trustee that immediate precautionary action may be necessary.

The form also has been amended to provide a checkbox for designating a clearing bank case filed under subchapter V of chapter 7 of the Code enacted by § 112 of Pub. L. No. 106-554 (December 21, 2000).

MEMORANDUM TO: THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

SUBJECT: Request for Delayed Effective Date for Official Forms 1 and 15

An amendment to Official Form 15, Order Confirming Plan, was approved by the Committee at its September 2000 meeting. As the amendment merely conforms the official form to proposed amendments to Rule 3020, currently pending at the Supreme Court, the Committee determined that it would not be necessary to publish the proposed amendment for comment. The proposed amendments to Official Form 15 could be presented for adoption at the September 2001 session of the Judicial Conference. The proposed amendments to Rule 3020 are expected to become effective December 1, 2001.

In addition, the Committee republished for further comment, proposed amendments to Official Form 1, Voluntary Petition, adding to that form an Exhibit "C" to notify the United States trustee and others of the possible possession by the debtor of hazardous material. In addition, in December 2000, the Code was amended to add to chapter 7, a subchapter V to for so-called "clearing banks." A conforming amendment to identify cases that are proceeding under the new subchapter will be considered at the meeting. If the Advisory Committee approves both amendments, Form 1 could be presented for adoption at the September 2001 session of the Judicial Conference.

Under Rule 9009, official forms are prescribed by the Judicial Conference. No further approvals, by either the Supreme Court or the Congress, are necessary. Actions of the Judicial Conference are effective immediately unless provision is made for a different effective date. If no delay is requested and granted, the amended Form 1, Voluntary Petition, and Form 15, Order Confirming Plan, could become effective September 11, 2001. Thus, the amendments to Form 15 could take effect before the amendments to Rule 3020 that the form is designed to implement.

The Administrative Office cannot provide copies of the proposed amendments Form 1 to bankruptcy forms publishers and software vendors in advance of September 11, 2001, because the Judicial Conference could reject the form. Accordingly, it would be appropriate for the Committee to request the Judicial Conference, if it approves the amend Form 1, to prescribe a

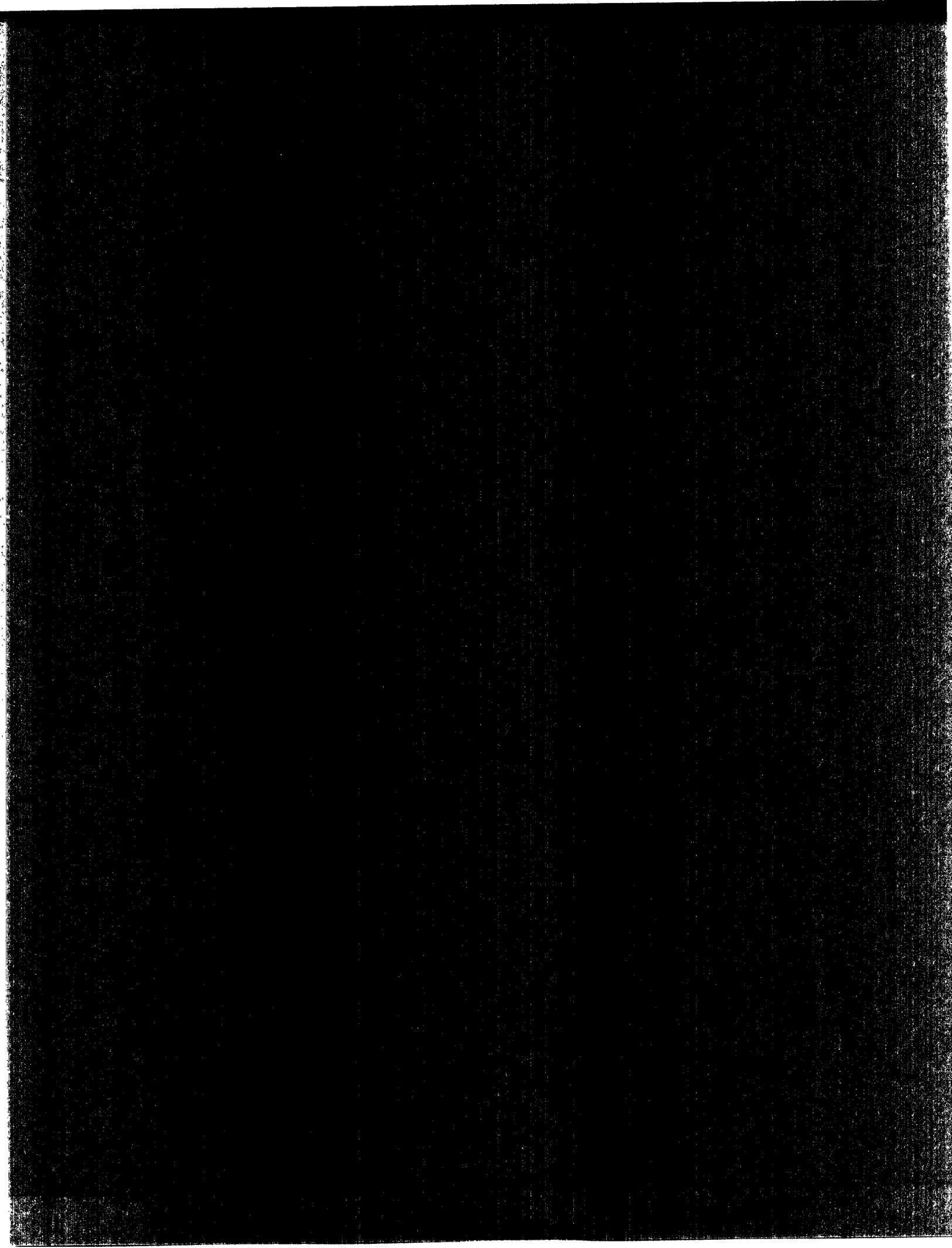
Delayed Effective Date - 2

delayed effective date, so that court personnel can familiarize themselves with the form and to permit publishers and software vendors to distribute the new form to their customers. An effective date of December 1, 2001, the same date that rules amendments take effect, would give publishers, software vendors, and court personnel sufficient time and consolidate the effective date for both forms and rules.

Copies of the forms showing the proposed amendments are attached.

Patricia S. Ketchum
03/02/01

Attachments



FORM B1	United States Bankruptcy Court District of _____	Voluntary Petition
----------------	-------------------------------------------------------------------	---------------------------

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (if more than one, state all):	Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code):	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business:	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

<p>Type of Debtor (Check all boxes that apply)</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad</p> <p><input type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker</p> <p><input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker</p> <p><input type="checkbox"/> Other _____</p>	<p>Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)</p> <p><input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 13</p> <p><input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12</p> <p><input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>Nature of Debts (Check one box)</p> <p><input type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business</p>	<p>Filing Fee (Check one box)</p> <p><input type="checkbox"/> Full Filing Fee attached</p> <p><input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>Chapter 11 Small Business (Check all boxes that apply)</p> <p><input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101</p> <p><input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)</p>	<p>THIS SPACE IS FOR COURT USE ONLY</p>																		
<p>Statistical/Administrative Information (Estimates only)</p> <p><input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors.</p> <p><input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.</p>																			
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: left;">Estimated Number of Creditors</td> <td style="text-align: center;">1-15</td> <td style="text-align: center;">16-49</td> <td style="text-align: center;">50-99</td> <td style="text-align: center;">100-199</td> <td style="text-align: center;">200-999</td> <td style="text-align: center;">1000-over</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over		<input type="checkbox"/>										
Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over													
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: left;">Estimated Assets</td> <td style="text-align: center;">\$0 to \$50,000</td> <td style="text-align: center;">\$50,001 to \$100,000</td> <td style="text-align: center;">\$100,001 to \$500,000</td> <td style="text-align: center;">\$500,001 to \$1 million</td> <td style="text-align: center;">\$1,000,001 to \$10 million</td> <td style="text-align: center;">\$10,000,001 to \$50 million</td> <td style="text-align: center;">\$50,000,001 to \$100 million</td> <td style="text-align: center;">More than \$100 million</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Estimated Assets	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million		<input type="checkbox"/>								
Estimated Assets	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million											
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>											
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Estimated Debts	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million											
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>											

Voluntary Petition
(This page must be completed and filed in every case)

Name of Debtor(s):

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location Where Filed:

Case Number:

Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:

Case Number:

Date Filed:

District:

Relationship:

Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of Attorney

X _____
Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X _____
Signature of Attorney for Debtor(s) Date

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.
 No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X _____
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

Exhibit "C"

[If, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit "C" to the petition.]

[Caption as in Form 16B]

Exhibit "C" to Voluntary Petition

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor's knowledge, poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

COMMITTEE NOTE

The form has been amended to require the debtor to disclose whether the debtor owns or had possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety. If any such property exists, the debtor must complete and attach Exhibit "C" describing the property, its location, and the potential danger it poses. Exhibit "C" will alert the United States trustee and any person selected as trustee that immediate precautionary action may be necessary.

Form 15. ORDER CONFIRMING PLAN

[Caption as in Form 16A]

ORDER CONFIRMING PLAN

The plan under chapter 11 of the Bankruptcy Code filed by _____, on _____ *[if applicable, as modified by a modification filed on _____,]* or a summary thereof, having been transmitted to creditors and equity security holders; and

It having been determined after hearing on notice that the requirements for confirmation set forth in 11 U.S.C. § 1129(a) *[or, if appropriate, 11 U.S.C. § 1129(b)]* have been satisfied;

IT IS ORDERED that:

The plan filed by _____, on _____, *[if appropriate, include dates and any other pertinent details of modifications to the plan]* is confirmed. *[If the plan provides for an injunction against conduct not otherwise enjoined under the Code, include the information required by Rule 3020.]*

A copy of the confirmed plan is attached.

Dated: _____

BY THE COURT

United States Bankruptcy Judge.

COMMITTEE NOTE

The form is amended to conform to the December 1, 2001, amendments to Rule 3020.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: PROPOSED FINANCIAL DISCLOSURE RULE 7007.1 AND PROPOSED
AMENDMENT TO RULE 1007(a)(1)

DATE: FEBRUARY 26, 2001

We previously considered a proposed Rule 7007.1 that would require parties to adversary proceedings to file statements identifying parent corporations and other publicly held corporations that own at least 10% or more of the outstanding stock of the party. This proposal was derived from Rule 26.1 of the Federal Rules of Appellate Procedure. By way of further background for the new members of the Committee, the Standing Committee asked the Advisory Committees to consider proposing a rule similar to Appellate Rule 26.1 so that judges would be more able to identify when parties before them were related to an entity in which the judge held a financial interest thereby making compliance with Canon 3C(1)(c) of the Code of Conduct for United States Judges more feasible. The Advisory Committees on Civil and Criminal Rules have proposed rules addressing financial disclosure, and those rules currently are out for comment. Copies of Proposed Civil Rule 7.1 and Criminal Rule 12.4 are attached. While the Standing Committee recognizes that the Bankruptcy Code and the conduct of bankruptcy cases justify some diversion from the proposals of the other Rules Committees, maintaining as much consistency as possible within the different sets of rules remains a goal.

The Civil and Criminal Rules versions are nearly the same. Those rules require that parties file not only a statement identifying their parent corporation and any other publicly held company that owns at least 10% of the stock of the party, but also require disclosure of any other information that the Judicial Conference may hereafter deem appropriate. The notion is that the proposed rule is relatively narrow in its reach, and experience under the rule may identify other information that should be disclosed. Permitting the Judicial Conference to institute these additional requirements is more effective than through the Rules Enabling Act process given the three year delay in the effective date of a new rule. Moreover, since the information being disclosed is intended to assist the court in determining whether the judge should be disqualified from sitting in a case rather than to govern the conduct of the proceeding itself, leaving these decisions about disclosure to the Judicial Conference does not invade the province of the Rules Enabling Act.

There is also some difference of opinion between the Standing Committee and the Committee on Codes of Conduct on whether local rules on the subject should be prohibited or encouraged. Whatever solution the Standing Committee comes to on the matter, we would be strongly encouraged to follow that format unless a significant “bankruptcy” reason directs a contrary or even different solution.

The civil and criminal rules need not take account of any specific external provision in crafting their versions of a financial disclosure rule. On the other hand, § 101(9) of the Bankruptcy Code necessarily would render the civil or criminal rule more expansive if adopted as a Bankruptcy Rule. Rule 9001 provides that the definitions in § 101 of the Code govern in the Bankruptcy Rules. Therefore, adopting a rule that requires disclosure by a corporate party would

include disclosures by a variety of entities that may not be covered by the civil or criminal rule. Of course, since this is a consequence of the Bankruptcy Code, it seems appropriate to include the greater reach of the provision as compared to the reach of the counterpart rules. (The Standing Committee concluded after lengthy discussion that the rule should not be expanded to include forms of business entities other than traditional corporations.)

At the September 2000 meeting, the Advisory Committee concluded that the party should disclose entities that own an aggregate of 10% of the debtor's stock, whether that ownership is within a single class of the debtor's stock or is spread among different classes of stock. No distinction is to be made as to common or preferred stock, or otherwise. All stock interests that meet the 10% threshold would have to be disclosed. Furthermore, the Committee concluded that the disclosure requirement should apply whether the entity owns the stock directly or indirectly. This would prevent parties from shielding their ownership interests and disclosure obligations by holding the stock in a number of separate but captive entities. This is an "expansion" of the rule beyond what the other Advisory Committees have recommended, but our view was that the inclusion of the obligation to disclose both direct and indirect ownership was an improvement over the proposed civil and criminal rules.

The Committee also concluded, after lengthy discussion at the September 2000 meeting, that the disclosure obligation should apply to the debtor and the debtor's disclosure should be made at the outset of the case. Our prior draft did not include such an obligation on the theory that because the filing of the petition does not place any matter before the court for adjudication, there is no need to inform the court of the financial information. The Committee instead resolved that the information should be provided at the inception of the case. Moreover,

providing it at that time would alleviate the need for the debtor to supply that information in every adversary proceeding and contested matter that might arise in the course of the bankruptcy case.

The Subcommittee on Attorney Conduct met by conference call in January to consider a revised version of the rule that took into account the views of the Committee as expressed at the September 2000 meeting.

1 **RULE 7007.1 OWNERSHIP DISCLOSURE STATEMENT.**

2 **(a) Required Disclosure.** Any corporation that is a party to an
3 adversary proceeding[, other than the debtor,] shall file [two copies
4 of] a statement that –

5 (1) identifies any parent corporation and any publicly held
6 corporation that directly or indirectly owns 10% or more of any
7 class of stock [or other equity interest], or states that there are no
8 entities to report under subdivision (a)(1)(A) of this Rule; and

9 (2) discloses any additional information required by the
10 Judicial Conference of the United States.

11 **(b) Time for Filing.** A party shall file the statement required by
12 subdivision (a) of this Rule with its first pleading in an adversary
13 proceeding. A party must file a supplemental statement promptly
14 upon any change in circumstances that this Rule requires the party
15 to identify or disclose.

COMMITTEE NOTE

This Rule is derived from Rule 26.1 of the Federal Rules of Appellate Procedure. The information that parties must supply will support properly informed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c) of the Code of Conduct for United States Judges. This Rule does not cover all of the circumstances that may call for disqualification under the subjective financial interest standard of Canon 3C, and does not deal at all with other circumstances that may call for disqualification. Nevertheless, the required disclosures are calculated to reach the majority of circumstances that are likely to call for disqualification under Canon 3C(1)(c).

The Rule directs corporate parties to list those publicly held companies that hold significant ownership interests in them. This includes listing membership interests in limited liability companies and similar entities that fall under the definition of a corporation in Bankruptcy Code § 101(9). While these disclosure requirements may seem limited, framing a rule that calls for more detailed disclosure would be difficult. Unnecessary disclosure would place an undue burden on the parties and the court. Excessive disclosure creates a risk of overlooking a single item of information that might require disqualification in the volume of material submitted in response to a broad disclosure requirement.

Subdivision (a)(1)(B) of the Rule requires all parties to file an additional statement if the Judicial Conference of the United States acts to require further disclosure. Under this subdivision, the Judicial Conference can take advantage of experience under the Rule and technological advances to adopt additional disclosure requirements. The Judicial Conference, supported by the committees that work regularly with the Codes of Judicial Conduct and the Administrative Office of the United States Courts, is best suited to develop these requirements and to adjust them as appropriate.

Parties must file the statement with the first document (other than a proof of claim or notice of appearance) that they file in the case or proceeding. The Rule also requires parties to file supplemental statements promptly whenever changed circumstances require new identifications of parent corporations or others.

The Rule does not prohibit the adoption of local rules requiring

disclosures beyond those called for in Rule 7007.1. Action by the Judicial Conference in creating additional disclosure requirements, however, may include a limit on or preemption of local rules on the subject.

The above proposed rule differs from the rules offered by the Civil and Criminal Rules Committees in that it calls for the disclosure of ownership interests whether they are held directly or indirectly. Presumably, the other proposed rules intend to reach these interests, however, providing explicitly for their disclosure is preferable to the implicit requirement of the other rules. Proposed Rule 7007.1 also may diverge from the other rules if we include in it the reference to “other equity interests” as set out in the bracketed language on line 7. On one hand, the definition of corporation in Bankruptcy Code § 101(9) extends beyond corporations, and those definitions govern the Rules as well. Therefore, there would be no need to reference “other equity interests” specifically in Rule 7007.1. On the other hand, the Rule is intended to elicit the disclosure of information to assist the courts in determining whether a judge’s financial holdings require disqualification in the case or proceeding. Therefore, it would be helpful to the parties subject to the disclosure requirement to state in the Rule that its reach exceeds corporations and includes similar entities that fall under that definition in the Bankruptcy Code.

Line 3 of the draft rule includes a direction that the entity should file two copies of statement. This would permit the clerk to retain one copy of the statement and to forward the second copy to the appropriate judge. There is no reason to transmit another copy of the statement to the United States trustee.

At the Committee’s last meeting, there was a consensus that the debtor should file a financial disclosure statement at the commencement of the case. Even though the

commencement of the case does not itself create a need for a judge to exercise his or her discretion or otherwise act in a manner that there may create an appearance of impropriety, the debtor is likely to be involved in a number of adversary proceedings or contested matters in the course of the case. Rather than having the debtor file the same information each time it is a party to an adversary proceeding or contested matter, Rule 1007 is amended to require the debtor to disclose the information required by Rule 7007.1 at the commencement of the case along with the petition and the list of creditors. It is important for the court to have this information at the initiation of the case because of the potential of requests for first day orders and the like. Since the debtor must file the statement at the beginning of the case, Proposed Rule 7007.1(a) includes bracketed language that would exempt the debtor from the obligation to file the financial disclosure statement. If the Committee concludes that debtors should not be required to file the statement at the commencement of the case, the bracketed language would be omitted.

Rule 1007 LISTS, SCHEDULES, AND STATEMENTS; TIME LIMITS.

1 (a) LIST OF CREDITORS AND EQUITY SECURITY
2 HOLDERS, AND FINANCIAL DISCLOSURE STATEMENT.

3 (1) Voluntary Case. In a voluntary case, the debtor shall file
4 with the petition a list containing the name and address of each
5 creditor unless the petition is accompanied by a schedule of

6 liabilities. If the debtor is a corporation, the debtor shall file with
7 the petition the financial disclosure statement required under Rule
8 7007.1.

COMMITTEE NOTE

The Rule is amended to require the debtor to file a Financial Disclosure Statement setting out the information called for in Rule 7007.1. Requiring debtors to file the statement provides the court with an opportunity to make judicial disqualification determinations at the outset of the case. This could reduce problems later in the case by permitting the initial assignment of the case to a judge who holds no financial interest in a parent company of the debtor or some other entity that holds a significant ownership interest in the debtor. Moreover, by including the disclosure statement filing requirement at the commencement of the case, the debtor does not have to make the same disclosure filing each time it is involved in an adversary proceeding throughout the case. The financial disclosure requirements of Rule 7007.1 include an obligation to file supplemental statements as changes in ownership might arise. This obligation to file supplemental statements applies as well to the debtor under this Rule.

Proposing to add the rule as Rule 7007.1 places it in the rules governing adversary proceedings. The Subcommittee considered whether the rule should extend as well to contested matters. Contested matters include some of the most significant decisions a court must make in a case, but the Subcommittee concluded, after lengthy discussion, that the rule should not apply to contested matters because it would be ineffective in many instances. Contested matters are so varied in terms of their complexity and the speed in which they are presented to the court and resolved, that the Subcommittee rejected a single rule governing all contested matters. For example, the court may hold expedited hearings on relief from the automatic stay or similar

contested matters and may enter orders at the conclusion of the hearing. It may not be realistic to expect that all parties can supply the requested information. After attempting to create a list of contested matters to which a financial disclosure rule might apply, the Subcommittee concluded that the list would be over or under inclusive. Thus, the Subcommittee concluded that the financial disclosure rule should not extend to contested matters.

If the Committee believes that the rule should apply as well to contested matters, a corresponding amendment to Rule 9014 is necessary to carry the disclosure obligation over to contested matters. The proposed amendment to effect that change is set out below.

RULE 9014 CONTESTED MATTERS.*

1 (c) APPLICATION OF PART VII RULES. Unless the court
2 directs otherwise, the following rules shall apply: 7007.1, 7009,
3 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056,
4 7062, 7064, 7069, and 7071. An entity that desires to perpetuate
5 testimony may proceed in the same manner as provided in Rule
6 7027 for the taking of a deposition before an adversary proceeding.
7 The court may at any stage direct that one or more of the other
8 rules of Part VII shall apply. The court shall give notice of any
9 order issued under this paragraph to afford them a reasonable
10 opportunity to comply with the procedures prescribed by the order.

COMMITTEE NOTE

Subdivision (c) is amended to include a cross reference making

Rule 7007.1 applicable to contested matters. That rule requires parties to file a financial disclosure statement together with the first pleading in the matter.

* This version of Rule 9014(c) reflects the proposed changes to the Rule as published for comment in August 2000.

PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF CIVIL PROCEDURE*

Rule 7.1 Disclosure Statement

1 (a) Who Must File.

2 (1) Nongovernmental Corporate Party. A

3 nongovernmental corporate party to an action or

4 proceeding in a district court must file two copies of a

5 statement that:

6 (A) identifies any parent corporation and any

7 publicly held corporation that owns 10% or more of

8 its stock or states that there is no such corporation,

9 and

10 (B) discloses any additional information that may be

11 required by the Judicial Conference of the United

12 States.

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

2 FEDERAL RULES OF CIVIL PROCEDURE

- 12 **(2) Other Party.** Any other party to an action or
13 proceeding in a district court must file two copies of a
14 statement that discloses any information that may be
15 required by the Judicial Conference of the United States.
- 16 **(b) Time for Filing; Supplemental Filing.** A party must:
17 **(1)** file the Rule 7.1(a) statement upon its first
18 appearance, pleading, petition, motion, response, or other
19 request addressed to the court, and
20 **(2)** promptly file a supplemental statement upon any
21 change in the information that the statement requires.
- 22 **(c) Form Delivered to Judge.** The clerk must deliver a
23 copy of the Rule 7.1(a) statement to each judge acting in
24 the action or proceeding.

Committee Note

Rule 7.1 is drawn from Rule 26.1 of the Federal Rules of Appellate Procedure, with changes to adapt to the circumstances of district courts that dictate different provisions for the time of filing,

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number of copies, and the like. The information required by Rule 7.1(a)(1) reflects the "financial interest" standard of Canon 3C(1)(c) of the Code of Conduct for United States Judges. This information will support properly informed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c). It does not cover all of the circumstances that may call for disqualification under the financial interest standard, and does not deal at all with other circumstances that may call for disqualification.

Although the disclosures required by Rule 7.1(a)(1) may seem limited, they are calculated to reach a majority of the circumstances that are likely to call for disqualification on the basis of financial information that a judge may not know or recollect. Framing a rule that calls for more detailed disclosure will be difficult. Unnecessary disclosure requirements place a burden on the parties and on courts. Unnecessary disclosure of volumes of information may create a risk that a judge will overlook the one bit of information that might require disqualification, and also may create a risk that unnecessary disqualifications will be made rather than attempt to unravel a potentially difficult question. It has not been feasible to dictate more detailed disclosure requirements in Rule 7.1(a)(1).

Despite the difficulty of framing more detailed disclosure requirements, developing experience with divergent disclosure practices and with improving technology may provide the foundations for exacting additional requirements. The Judicial Conference, supported by the committees that work regularly with the Codes of Judicial Conduct and by the Administrative Office of the United States Courts, is in the best position to develop any additional requirements and to keep them adjusted to new information. Rule 7.1(a)(2)

4 FEDERAL RULES OF CIVIL PROCEDURE

authorizes adoption of additional disclosure requirements by the Judicial Conference, to be embodied in a uniform statement that applies in all courts.

Rule 7.1(a)(2) requires every party to file a disclosure statement if the Judicial Conference acts to adopt requirements that reach a party that is not a nongovernmental corporation. It cannot be predicted what information will be required, of what parties, if the Judicial Conference adopts additional requirements. The Judicial Conference may adopt requirements that apply only to some, not all parties. In that case, only the designated parties need file. Even if the requirements apply to all parties, it seems likely that many parties, and particularly individual parties, will not have any information that falls within the required categories. In that case, the Rule 7.1(a)(2) requirement is satisfied by filing a statement that indicates that there is nothing to disclose as to any of the required categories.

Rule 7.1 does not prohibit local rules that require disclosures in addition to those required by Rule 7.1 unless the Judicial Conference adopts requirements that preempt additional disclosures.

~~**F.D. Rules 54 and 58: Entry of Judgment**~~
~~The Civil Rules Advisory Committee became involved with the entry-of-judgment question at the January 2000 Standing Committee meeting. The Appellate Rule Advisory Committee raised for discussion the problems that arise from the interplay of Appellate Rule 4 with Civil Rule 58. Appellate Rule 4 provides appeal time from the entry of judgment. Civil Rule 58 requires that a judgment be set forth on a separate document. The combination of these two rules has created a problem because district courts frequently ignore a~~

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Rule 12.4. Disclosure Statement

1 **(a) Who Must File.**

2 **(1) Nongovernmental Corporate Party.** Any
3 nongovernmental corporate party to a proceeding in
4 a district court must file a statement that:

5 **(A) identifies any parent corporation and any**
6 publicly held corporation that owns 10% or
7 more of its stock or states that there is no such
8 corporation, and

9 **(B) discloses any additional information that may be**
10 required by the Judicial Conference of the
11 United States.

12 **(2) Organizational Victim.** If an organization is a
13 victim of the alleged criminal activity, the
14 government must file a statement identifying the
15 victim. If the organizational victim is a corporation,

16 the statement must also disclose the information
17 required by Rule 12.4(a)(1).

18 **(b) Time for Filing; Supplemental Filing.**

19 **(1) A party must file the Rule 12.4(a) statement upon its**
20 **first appearance, pleading, petition, motion,**
21 **response, or other request addressed to the court,**

22 **and**

23 **(2) must promptly file a supplemental statement upon**
24 **any change in the information that the statement**
25 **requires.**

COMMITTEE NOTE

Rule 12.4 is a new rule modeled after Federal Rule of Appellate Procedure 26.1 and parallels similar provisions being proposed in new Federal Rule of Civil Procedure 7.1. The purpose of the rule is to assist judges in determining whether they must recuse themselves because of a "financial interest in the subject matter in controversy." Code of Judicial Conduct, Canon 3C(1)(c)(1972). It does not, however, deal with other circumstances that might lead to disqualification for other reasons.

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52 FEDERAL RULES OF CRIMINAL PROCEDURE

Under Rule 12.4(a)(1), any nongovernmental corporate party must file a statement that indicates whether it has any parent corporation that owns 10% or more of its stock or indicates that there is no such corporation. In addition, the rule requires that party to disclose any other information that may be required by the Judicial Conference. Although the term "nongovernmental corporate party" will almost always involve organizational defendants, it might also cover any third party that asserts an interest in property to be forfeited under new Rule 32.2.

Rule 12.4(a)(2) requires an attorney for the government to file a statement that lists any organizational victims to the alleged criminal activity; the purpose of this disclosure is to alert the court to the fact that a possible ground for disqualification might exist. Further, if the organizational victim is a corporation, the statement must include the same information required of any nongovernmental corporate party.

Although the disclosures required by Rule 12.4 may seem limited, they are calculated to reach the majority of circumstances that are likely to call for disqualification on the basis of information that a judge may not know or recollect. Framing a rule that calls for more detailed disclosure is problematic and will inevitably require more information than is necessary for purposes of automatic recusal. Unnecessary disclosure of volumes of information may create the risk that a judge will overlook the one bit of information that might require disqualification, and may also create the risk that courts will experience unnecessary disqualifications rather than attempt to unravel a potentially difficult question.

The same concerns about overbreadth are potentially present in any local rules that might address this topic. Rule 12.4 does not

address the promulgation of any local rules that might address the same issue, or supplement the requirements of the rule. However, the authority granted to the Judicial Conference to require additional disclosures provides authority to preempt any local rules on the same topic.

The rule does not cover disclosure of all financial information that could be relevant to a judge's decision whether to recuse himself or herself from a case. The Committee believes that with the various disclosure practices in the federal courts and with the development of technology, more comprehensive disclosure may be desirable and feasible. The Committee further believes that the Judicial Conference is in the best position to develop any additional requirements and to adjust those requirements as technological and other developments warrant. Accordingly, Rule 12.4(a)(1)(B) authorizes the Judicial Conference to promulgate more detailed financial disclosure requirements for criminal cases.

Rule 12.4(b)(1) indicates that the time for filing a disclosure statement is at the point when the parties first have formal contact with the court in a criminal proceeding. In some instances, that might be as early as the initial appearance.

Finally, Rule 12.4(b)(2) requires the parties to file supplemental statements with the court if there are any changes in the information required in the statement.

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MEMORANDUM TO: THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

SUBJECT: Proposed Amendments to Certain Official Bankruptcy Forms to Protect Individual Privacy

At its September 2000 meeting the Committee discussed the availability of bankruptcy court case records on the Internet and the issues of individual privacy raised by this availability. The Committee voted in principle to publish for comment proposed amendments to the official forms that would change the disclosure of a debtor's Social Security number and account numbers with creditors from the full numbers to only the last four digits of each number. Although most of the information requested in the official forms requires disclosures by the debtor, a proof of claim for wages or other compensation requires the creditor to provide his or her Social Security numbers. The attached forms show the proposed amendments that would restrict disclosure of Social Security numbers and account numbers of debtors and creditors to the last four digits of those numbers.

There are some necessary exceptions to the Committee's proposal to limit disclosure of all Social Security numbers to the last four digits. The first exception concerns non-attorney bankruptcy petition preparers, who are required under § 110(c) of the Code to provide their Social Security numbers. This provision was upheld by the Ninth Circuit in In re Crawford, 194 F.3d 954 (9th Cir. 1999). Official Forms 1, 3, 6, 7, and 8 incorporate certifications by a petition preparer, and Official Form 19 is a free-standing certification by a petition preparer. On these forms a sentence has been added stating the statutory requirement. In addition, § 342(c) of the Code provides that if the debtor is required to give notice to a creditor, the notice must contain the debtor's Social Security number in addition to other information. Official Form 16C is a form for the caption of the complaint in an adversary proceeding initiated by a debtor. Although a debtor's motion requesting relief against a creditor also may be a notice, there is no separate caption for that purpose.

The Forms Subcommittee also examined all of the official forms to determine whether there may be any unnecessary information collected in the official forms and concluded that nearly all the information required is necessary to the trustee, creditors, and other parties in interest. The names of a debtor's dependents, however, which is required on Schedule I, probably is not necessary when the relationship and age of each dependent is provided. As the privacy of nondebtors was raised at the September 2000 meeting by Bankruptcy Judge Marcia Krieger as being of concern to the Committee on the Administration of the Bankruptcy System, Schedule I shows the names of the debtor's dependents as proposed for deletion. The

Forms/Privacy – 2

Committee Note sentence concerning this item appears in brackets, as it was not part of the official action of the Committee to publish this amendment.

These proposed amendments were circulated to the Subcommittee on Privacy and Public Access, which is continuing to explore other means for balancing the public interest in access to bankruptcy court records with the privacy interests of individuals.

Subcommittee on Forms

Attachments

OFFICIAL BANKRUPTCY FORMS

- ✓ 1. Voluntary Petition
- 2. Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership
- ✓ 3. Application and Order to Pay Filing Fee in Installments
- 4. List of Creditors Holding 20 Largest Unsecured Claims
- 5. Involuntary Petition
- ✓ 6. Schedules
- ✓ 7. Statement of Financial Affairs
- ✓ 8. Chapter 7 Individual Debtor's Statement of Intention
- ✓ 9. Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Deadlines
- ✓ 10. Proof of Claim
- 11A. General Power of Attorney
- 11B. Special Power of Attorney
- 12. Order and Notice for Hearing on Disclosure Statement
- 13. Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof
- 14. Ballot for Accepting or Rejecting Plan
- 15. Order Confirming Plan
- ✓ 16A. Caption
- 16B. Caption (Short Title)
- ✓ 16C. Caption of Complaint in Adversary Proceeding Filed by a Debtor
- 16D. Caption for Use in Adversary Proceeding other than for a Complaint Filed by a Debtor
- 17. Notice of Appeal under 28 U.S.C. § 158(a) or (b) from a Judgment, Order or Decree of a Bankruptcy Court
- 18. Discharge of Debtor
- ✓ 19. Certification and Signature of Non-Attorney Bankruptcy Petition Preparer (See 11 U.S.C. § 110)
- 20A. Notice of Motion or Objection
- 20B. Notice of Objection to Claim

Official Forms

[NOTE: These official forms should be observed and used with such alterations as may be appropriate to suit the circumstances. See Federal Rule of Bankruptcy Procedure 9009.]

Voluntary Petition

(This page must be completed and filed in every case)

Name of Debtor(s):

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location
Where Filed:

Case Number:

Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:

Case Number:

Date Filed:

District:

Relationship:

Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor
X _____
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Signature of Attorney

X _____
Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number (Required by 11 U.S.C. § 110(c).)

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X _____
Signature of Attorney for Debtor(s) Date

X _____
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.

COMMITTEE NOTE

The form has been amended to require the debtor to disclose only the last four digits of the debtor's Social Security number to provide creditors with sufficient information to identify the debtor accurately while affording greater privacy to the debtor. The certification by a non-attorney bankruptcy petition preparer continues to require a petition preparer to provide the full Social Security number of the individual who actually prepares the document pursuant to § 110(c) of the Code.

COMMITTEE NOTE

The certification by a non-attorney bankruptcy petition preparer continues to require a petition preparer to provide the full Social Security number of the individual who actually prepares the document pursuant to § 110(c) of the Code.

FORM 5. INVOLUNTARY PETITION

United States Bankruptcy Court District of _____		INVOLUNTARY PETITION
IN RE (Name of Debtor—If Individual Last, First, Middle) Last four digits of _____ SOC. SEC./TAX I.D. NO. (If more than one, state all) _____	ALL OTHER NAMES used by debtor in the last 6 years (Include married, maiden, and trade names) _____	
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code) _____ <div style="border: 1px solid black; padding: 2px; width: fit-content; margin-left: auto; margin-right: auto;"> COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS </div>	MAILING ADDRESS OF DEBTOR (If different from street address) _____	
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses) _____		
CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11		
INFORMATION REGARDING DEBTOR (Check applicable boxes)		
Petitioners believe: <input type="checkbox"/> Debts are primarily consumer debts <input type="checkbox"/> Debts are primarily business debts (complete sections A and B)	TYPE OF DEBTOR <input type="checkbox"/> Individual <input type="checkbox"/> Corporation Publicly Held <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation Not Publicly Held <input type="checkbox"/> Other: _____	
A. TYPE OF BUSINESS (Check one) <input type="checkbox"/> Professional <input type="checkbox"/> Transportation <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Retail/Wholesale <input type="checkbox"/> Manufacturing/ <input type="checkbox"/> Construction <input type="checkbox"/> Railroad Mining <input type="checkbox"/> Real Estate <input type="checkbox"/> Stockbroker <input type="checkbox"/> Other	B. BRIEFLY DESCRIBE NATURE OF BUSINESS _____	
VENUE		
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District.		
PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)		
Name of Debtor _____	Case Number _____	Date _____
Relationship _____	District _____	Judge _____
ALLEGATIONS (Check applicable boxes) 1. <input type="checkbox"/> Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b). 2. <input type="checkbox"/> The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code. 3.a. <input type="checkbox"/> The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute; <div style="text-align: center;">or</div> b. <input type="checkbox"/> Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.		COURT USE ONLY

COMMITTEE NOTE

The form has been amended to require the debtor to disclose only the last four digits of the debtor's Social Security number to provide creditors with sufficient information to identify the debtor accurately while affording greater privacy to the debtor.

The certification by a non-attorney bankruptcy petition preparer continues to require a petition preparer to provide the full Social Security number of the individual who actually prepares the document pursuant to § 110(c) of the Code.

FORM 6. SCHEDULES

Summary of Schedules

Schedule A—Real Property

Schedule B—Personal Property

Schedule C—Property Claimed as Exempt

Schedule D—Creditors Holding Secured Claims

Schedule E—Creditors Holding Unsecured Priority Claims

Schedule F—Creditors Holding Unsecured Nonpriority Claims

Schedule G—Executory Contracts and Unexpired Leases

Schedule H—Codebtors

Schedule I—Current Income of Individual Debtor(s)

Schedule J—Current Expenditures of Individual Debtor(s)

Unsworn Declaration under Penalty of Perjury

GENERAL INSTRUCTIONS: The first page of the debtor's schedules and the first page of any amendments thereto must contain a caption as in Form 16B. Subsequent pages should be identified with the debtor's name and case number. If the schedules are filed with the petition, the case number should be left blank.

Schedules D, E, and F have been designed for the listing of each claim only once. Even when a claim is secured only in part or entitled to priority only in part, it still should be listed only once. A claim which is secured in whole or in part should be listed on Schedule D only, and a claim which is entitled to priority in whole or in part should be listed on Schedule E only. Do not list the same claim twice. If a creditor has more than one claim, such as claims arising from separate transactions, each claim should be scheduled separately.

Review the specific instructions for each schedule before completing the schedule.

SCHEDULE B—PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. *State only the last four digits of any account number.* If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C—Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G—Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>1. Cash on hand.</p> <p>2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and home-stead associations, or credit unions, brokerage houses, or cooperatives.</p> <p>3. Security deposits with public utilities, telephone companies, landlords, and others.</p> <p>4. Household goods and furnishings, including audio, video, and computer equipment.</p> <p>5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.</p> <p>6. Wearing apparel.</p> <p>7. Furs and jewelry.</p> <p>8. Firearms and sports, photographic, and other hobby equipment.</p> <p>9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.</p> <p>10. Annuities. Itemize and name each issuer.</p>				

In re _____, Debtor

Case No. _____
(If known)

SCHEDULE B—PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.</p> <p>12. Stock and interests in incorporated and unincorporated businesses. Itemize.</p> <p>13. Interests in partnerships or joint ventures. Itemize.</p> <p>14. Government and corporate bonds and other negotiable and non-negotiable instruments.</p> <p>15. Accounts receivable.</p> <p>16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.</p> <p>17. Other liquidated debts owing debtor including tax refunds. Give particulars.</p> <p>18. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.</p> <p>19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.</p> <p>20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.</p> <p>21. Patents, copyrights, and other intellectual property. Give particulars.</p> <p>22. Licenses, franchises, and other general intangibles. Give particulars.</p>				

In re _____,
Debtor

Case No. _____
(If known)

SCHEDULE B—PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
23. Automobiles, trucks, trailers, and other vehicles and accessories.				
24. Boats, motors, and accessories.				
25. Aircraft and accessories.				
26. Office equipment, furnishings, and supplies.				
27. Machinery, fixtures, equipment, and supplies used in business.				
28. Inventory.				
29. Animals.				
30. Crops—growing or harvested. Give particulars.				
31. Farming equipment and implements.				
32. Farm supplies, chemicals, and feed.				
33. Other personal property of any kind not already listed. Itemize.				
_____ continuation sheets attached			Total ▶	\$

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

In re _____
Debtor

Case No. _____
(If known)

SCHEDULE D—CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H—Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
<i>Last four digits of</i> ACCOUNT NO.								
<i>Last four digits of</i> ACCOUNT NO.			VALUE \$					
<i>Last four digits of</i> ACCOUNT NO.			VALUE \$					
<i>Last four digits of</i> ACCOUNT NO.			VALUE \$					
ACCOUNT NO.			VALUE \$					

_____ continuation sheets attached

Subtotal	\$
(Total of this page)	
Total	\$
(Use only on last page)	

(Report total also on Summary of Schedules)

In re _____
Debtor

Case No. _____
(If known)

SCHEDULE D—CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
<i>Last four digits of</i> <input checked="" type="checkbox"/> ACCOUNT NO.							
<input type="checkbox"/> ACCOUNT NO.		VALUE \$					
<i>Last four digits of</i> <input checked="" type="checkbox"/> ACCOUNT NO.							
<input type="checkbox"/> ACCOUNT NO.		VALUE \$					
<i>Last four digits of</i> <input checked="" type="checkbox"/> ACCOUNT NO.							
<input type="checkbox"/> ACCOUNT NO.		VALUE \$					
<i>Last four digits of</i> <input checked="" type="checkbox"/> ACCOUNT NO.							
<input type="checkbox"/> ACCOUNT NO.		VALUE \$					
<input checked="" type="checkbox"/> ACCOUNT NO.							
<input type="checkbox"/> ACCOUNT NO.		VALUE \$					

Sheet no. _____ of _____ continuation sheets attached to Schedule of Creditors Holding Secured Claims Subtotal ▶ \$
 (Total of this page)
 Total ▶ \$
 (Use only on last page)

(Report total also on Summary of Schedules)

In re _____ Debtor _____

Case No. _____
(If known)

SCHEDULE E—CREDITORS, HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet)

TYPE OF PRIORITY

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	TOTAL AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY
<i>Last four digits of</i> ACCOUNT NO.								
<i>Last four digits of</i> ACCOUNT NO.								
<i>Last four digits of</i> ACCOUNT NO.								
<i>Last four digits of</i> ACCOUNT NO.								
<i>Last four digits of</i> ACCOUNT NO.								
ACCOUNT NO.								

Sheet no. _____ of _____ sheets attached to Schedule of Creditors Holding Priority Claims

Subtotal	▶	\$
(Total of this page)	▶	\$
Total	▶	\$

(Use only on last page of the completed Schedule E.)

(Report total also on Summary of Schedules)

In re _____,

Case No. _____

Debtor

(If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

last four digits of the

State the name, mailing address, including zip code, and account number, if any, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community maybe liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
<i>Last four digits of</i> ACCOUNT NO.							
<i>Last four digits of</i> ACCOUNT NO.							
<i>Last four digits of</i> ACCOUNT NO.							
<i>Last four digits of</i> ACCOUNT NO.							

_____ continuation sheets attached

Subtotal ► \$ _____
 Total ► \$ _____

(Report total also on Summary of Schedules)

In re _____ Debtor _____

Case No. _____
(If known)

SCHEDULE F—CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	STATUS			AMOUNT OF CLAIM
			CONTINGENT	UNLIQUIDATED	DISPUTED	
<p>← Last four digits of</p> <p>ACCOUNT NO.</p>						
<p>← Last four digits of</p> <p>ACCOUNT NO.</p>						
<p>← Last four digits of</p> <p>ACCOUNT NO.</p>						
<p>← Last four digits of</p> <p>ACCOUNT NO.</p>						
<p>← Last four digits of</p> <p>ACCOUNT NO.</p>						
<p>← Last four digits of</p> <p>ACCOUNT NO.</p>						

Sheet no. _____ of _____ sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ▶ \$
(Total of this page)
Total ▶ \$

(Use only on last page of the completed Schedule E.)

(Report total also on Summary of Schedule)

In re _____ Debtor

Case No. _____ (If known)

SCHEDULE I—CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE		
	NAMES	AGE	RELATIONSHIP

Employment:	DEBTOR	SPOUSE	
Occupation			
Name of Employer			
How long employed			
Address of Employer			

Income: (Estimate of average monthly income)
 Current monthly gross wages, salary, and commissions
 (pro rate if not paid monthly.)
 Estimated monthly overtime

	DEBTOR	SPOUSE
	\$ _____	\$ _____
	\$ _____	\$ _____
SUBTOTAL	\$ _____	\$ _____

LESS PAYROLL DEDUCTIONS

- a. Payroll taxes and social security
- b. Insurance
- c. Union dues
- d. Other (Specify: _____)

\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____

SUBTOTAL OF PAYROLL DEDUCTIONS

\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____

TOTAL NET MONTHLY TAKE HOME PAY

Regular income from operation of business or profession or farm
 (attach detailed statement)

\$ _____	\$ _____	\$ _____
----------	----------	----------

Income from real property

\$ _____	\$ _____	\$ _____
----------	----------	----------

Interest and dividends

\$ _____	\$ _____	\$ _____
----------	----------	----------

Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.

\$ _____	\$ _____	\$ _____
----------	----------	----------

Social security or other government assistance

(Specify) _____

\$ _____	\$ _____	\$ _____
----------	----------	----------

Pension or retirement income

\$ _____	\$ _____	\$ _____
----------	----------	----------

Other monthly income

\$ _____	\$ _____	\$ _____
----------	----------	----------

(Specify) _____

\$ _____	\$ _____	\$ _____
----------	----------	----------

TOTAL MONTHLY INCOME

\$ _____	\$ _____	\$ _____
----------	----------	----------

TOTAL COMBINED MONTHLY INCOME \$ _____

(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

In re _____ Debtor

Case No. _____ (If known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets, and that they are true and correct to the best of my knowledge, information, and belief. *(Total shown on summary page plus 1.)*

Date _____

Signature: _____ Debtor

Date _____

Signature: _____ *(Joint Debtor, if any)*
[If joint case, both spouses must sign.]

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer _____

Social Security No. _____
(Required by 11 U.S.C. § 110(c).)

Address _____

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X _____
Signature of Bankruptcy Petition Preparer

_____ Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the _____ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the _____ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets, and that they are true and correct to the best of my knowledge, information, and belief. *(Total shown on summary page plus 1.)*

Date _____

Signature: _____

_____ [Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

COMMITTEE NOTE

Schedule B (Personal Property), Schedule D (Creditors Holding Secured Claims), Schedule E (Creditors Holding Unsecured Priority Claims), and Schedule F (Creditors Holding Unsecured Nonpriority Claims) have been amended to require disclosure of only the last four digits of the debtor's account number with each listed creditor. The amendments should provide creditors with sufficient information to identify the debtor accurately while affording greater privacy to the debtor.

[Schedule I (Current Income of Individual Debtor(s)) has been amended to provide greater privacy to minors and other dependents of the debtor by deleting the requirement that the debtor disclose their names.]

The certification by a non-attorney bankruptcy petition preparer continues to require a petition preparer to provide the full Social Security number of the individual who actually prepares the document pursuant to § 110(c) of the Code.

FORM 7. STATEMENT OF FINANCIAL AFFAIRS
UNITED STATES BANKRUPTCY COURT

_____ DISTRICT OF _____

In re: _____
(Name)
Debtor

Case No. _____
(if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE (if more than one)

11. Closed financial accounts

None

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

, LAST FOUR DIGITS OF ACCOUNT NUMBER,

NAME AND ADDRESS OF INSTITUTION	TYPE AND NUMBER OF ACCOUNT AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
------------------------------------	------------------------------------------------------------------------------------	------------------------------------------

12. Safe deposit boxes

None

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
----------------------------------------------------	---------------------------------------------------------------------	-------------------------------	---------------------------------------------

13. Setoffs

None

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
------------------------------	-------------------	---------------------

14. Property held for another person

None

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
------------------------------	--------------------------------------	----------------------

15. Prior address of debtor

respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
---------------------------------------	---------------	-----------------------

18 . Nature, location and name of business

None a If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

>

NAME	LAST FOUR DIGITS OF TAXPAYER I.D. NUMBER	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
------	------------------------------------------	---------	--------------------	----------------------------

None b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
------	---------

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

24. Tax Consolidation Group.

None

If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION ← **LAST FOUR DIGITS OF**
TAXPAYER IDENTIFICATION NUMBER

25. Pension Funds.

None

If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND ← **LAST FOUR DIGITS OF**
TAXPAYER IDENTIFICATION NUMBER

* * * * *

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct

Date _____

Signature _____
of Debtor

Date _____

Signature _____
of Joint Debtor
(if any)

[If completed on behalf of a partnership or corporation]

I, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief

Date _____

Signature _____

Print Name and Title _____

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor]

_____ continuation sheets attached

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C § 152 and 3571

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document

Printed or Typed Name of Bankruptcy Petition Preparer _____

Social Security No. _____

(Required by 11 U.S.C. § 110(c).)

Address _____

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

X _____
Signature of Bankruptcy Petition Preparer

_____ Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. § 156.

COMMITTEE NOTE

The form has been amended to require the debtor to disclose only the last four digits of the debtor's Social Security number to provide creditors with sufficient information to identify the debtor accurately while affording greater privacy to the debtor.

The certification by a non-attorney bankruptcy petition preparer continues to require a petition preparer to provide the full Social Security number of the individual who actually prepares the document pursuant to § 110(c) of the Code.

Form 8. INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION
[Caption as in Form 16B]

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

1. I have filed a schedule of assets and liabilities which includes consumer debts secured by property of the estate.
2. I intend to do the following with respect to the property of the estate which secures those consumer debts:

a. *Property to Be Surrendered.*

Description of Property

Creditor's name

b. *Property to Be Retained*

[Check any applicable statement.]

Description of Property	Creditor's Name	Property is claimed as exempt	Property will be redeemed pursuant to 11 U.S.C. § 722	Debt will be reaffirmed pursuant to 11 U.S.C. § 524(c)

Date: _____

Signature of Debtor

CERTIFICATION OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer

Social Security No.

(Required by 11 U.S.C. § 110(c).)

Address

Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document.

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X _____
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

COMMITTEE NOTE

The certification by a non-attorney bankruptcy petition preparer continues to require a petition preparer to provide the full Social Security number of the individual who actually prepares the document pursuant to § 110(c) of the Code.

FORM 9. NOTICE OF COMMENCEMENT OF CASE UNDER THE
BANKRUPTCY CODE, MEETING OF CREDITORS,
AND DEADLINES

9A.....Chapter	7, Individual/Joint, No-Asset Case
9B.....Chapter	7, Corporation/Partnership, No-Asset Case
9C.....Chapter	7, Individual/Joint, Asset Case
9D.....Chapter	7, Corporation/Partnership, Asset Case
9E.....Chapter	11, Individual/Joint Case
9E(Alt.)..Chapter	11, Individual/Joint Case
9F.....Chapter	11, Corporation/Partnership Case
9F(Alt.)..Chapter	11, Corporation/Partnership Case
9G.....Chapter	12, Individual/Joint Case
9H.....Chapter	12, Corporation/Partnership Case
9I.....Chapter	13, Individual/Joint Case

COMMITTEE NOTE

The certification by a non-attorney bankruptcy petition preparer continues to require a petition preparer to provide the full Social Security number of the individual who actually prepares the document pursuant to § 110(c) of the Code.

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		PROOF OF CLAIM
Name of Debtor	Case Number	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property):	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent:	THIS SPACE IS FOR COURT USE ONLY	
Telephone number:		
Account or other number by which creditor identifies debtor:	Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends	
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of Your SS #: _____ Unpaid compensation for services performed from _____ (date) to _____ (date)		
2. Date debt was incurred:		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ _____ If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: \$ 4,650 <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,300)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input checked="" type="checkbox"/> \$ 2,100* Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$1,950 * of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

COMMITTEE NOTE

The form has been amended to require a wage, salary, or other compensation creditor to disclose only the last four digits of the creditor's Social Security number to afford greater privacy to the creditor. A trustee can request the full information necessary for tax withholding and reporting at the time the trustee makes a distribution to creditors.

Form 16A. CAPTION (FULL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

In re _____)
Set forth here all names including married,)
maiden, and trade names used by debtor within)
last 6 years.])
Debtor) Case No. _____)
Address _____)
Last four digits of) Chapter _____)
Social Security No(s). _____ and ^{of} all)
Employer's Tax Identification No(s). *[if any]* _____)
_____)

[Designation of Character of Paper]

COMMITTEE NOTE

The form has been amended to require disclosure of only the last four digits of the debtor's Social Security number to provide creditors with sufficient information to identify the debtor accurately while affording greater privacy to the debtor.

**FORM 16C. CAPTION OF COMPLAINT IN ADVERSARY PROCEEDING
FILED BY A DEBTOR**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____**

In re _____ <i>Debtor</i>)	Case No. _____
Address _____)	Chapter _____
_____)	
Social Security No(s)* _____ or)	
Employer's Tax Identification No(s)*[if any] _____)	
_____)	
_____)	
<i>Plaintiff</i>)	
v.)	
_____)	Adv. Proc. No. _____
<i>Defendant</i>)	

* (Required by 11 U.S.C. § 342 (c).)

COMPLAINT

COMMITTEE NOTE

Section 342(c) of the Code requires a debtor to provide the debtor's Social Security number on any notice furnished to the creditors by the debtor. A complaint, which combined with a summons and served on a defendant, functions as a notice of the commencement of an adversary proceeding. The form is amended to advise the debtor of the statutory basis for requiring disclosure of the Social Security number.

**Form 19. CERTIFICATION AND SIGNATURE OF NON-ATTORNEY
BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

[Caption as in Form 16B.]

**CERTIFICATION AND SIGNATURE OF NON-ATTORNEY
BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer

Social Security No.
(Required by 11 U.S.C. § 110(c).)

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X _____
Signature of Bankruptcy Petition Preparer

Date

COMMITTEE NOTE

The certification by a non-attorney bankruptcy petition preparer continues to require a petition preparer to provide the full Social Security number of the individual who actually prepares the document pursuant to § 110(c) of the Code.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: APPLICATION OF RULE 7026 IN ADVERSARY PROCEEDINGS AND
CONTESTED MATTERS

DATE: FEBRUARY 27, 2001

Effective December 1, 2000, courts can no longer employ local rules to opt out of the mandatory initial disclosure requirements of Rule 26 of the Federal Rules of Civil Procedure. Under Bankruptcy Rule 9032, that change is effective in bankruptcy cases since Bankruptcy Rules 7026 and 9014 provide that F.R.C.P. 26 applies in adversary proceedings and contested matters, respectively. Rule 9014, however, does provide that the court may order that Rule 7026 (and therefore F.R.C.P. 26) does not apply in a particular contested matter. Bankruptcy Rule 7026 does not provide that the court can order that the rule not apply, but Civil Rule 26(a) permits the court to order in a particular case that some different discovery process be employed.

Many of the district courts had opted out of the mandatory discovery disclosure rule by local rule. The attached report by Elizabeth Wiggins and Shannon Wheatman of the Federal Judicial Center demonstrates that the vast majority of bankruptcy courts also opted out of the mandatory disclosure rule or significantly limited its reach. For example, a number of the courts adopted local rules that opted out for all contested matters, unless the court ordered otherwise.

See, e.g., Local Rule 7026-1 for D. Kans. (Page 33 of attached Report). Others opted out for both adversary proceedings and contested matters, unless the court ordered otherwise. See, e.g., Local Rule 7026-1 for E.D. Ky. (Page 16 of attached Report). Certainly, the widespread opt out suggests that the bankruptcy courts did not perceive the need for the mandatory disclosure provisions for all adversary proceedings and contested matters. The Committee Note to the 1993 amendments to Rule 26 state that the purpose of the initial disclosure rule is to “accelerate the exchange of basic information about the case and to eliminate the paper work involved in requesting such information....” 1993 Committee Note to F.R.C.P. 26, *reprinted in* 6 Moore’s Federal Practice at 26App.-52.

The timing of the initial disclosures is set out in Rule 26(f) and is tied to the date of a scheduling conference or the time when a scheduling order is due under Rule 16(b). That rule provides that the court must enter a scheduling order “within 90 days of the entry of an appearance of a defendant and within 120 days after the complaint has been served on a defendant.” The parties must confer about matters related to the initial disclosure at least 21 days prior to the date of the scheduling order, and must submit an appropriate report to the court on the issues within 14 days after the conference. The report includes the parties’ views on the timing of both the initial disclosure obligation and subsequent discovery. The report also must address any special need for protective orders and other issues necessary for the efficient administration of the case.

It is questionable whether following the letter of Rule 26 in bankruptcy cases through Bankruptcy Rules 7026 and 9014 will lead to the acceleration of the discovery and trial process in the bankruptcy courts. In contested matters, the court likely will already have heard and

disposed of the issue prior to the deadline imposed under Civil Rules 26(f). The bulk of adversary proceedings are actions to determine the dischargeability of a debt under § 523(a) of the Code or transfer avoidance actions, and many of these cases also are resolved expeditiously. Both the Commercial Law League and the several Committees of Michigan Bar Members asserted that the strict application of F.R.C.P. 26 would not expedite, and may in fact delay, most adversary proceedings. They also noted that the rule would be especially difficult for pro se parties (both debtors and creditors) for whom the litigation is frequently conducted without any formal discovery. Indeed, the costs of complying with the mandatory initial disclosure requirements may be unduly burdensome for many litigants. They suggest that the default rule be reversed from that of Civil Rule 26. Under that Rule, the court can order that the discovery process set out in the Rule not be followed in a particular case. Thus, the Commercial Law League and the Michigan Bar Committees propose that the initial disclosure rules not apply in adversary proceedings or contested matters unless the court specifically so orders.

Th opposing argument is that adversary proceedings are nearly identical to other forms of civil litigation in the district courts, and the discovery process in those proceedings should be conducted in the same fashion. The rule was proposed to create savings in time and expense for both the court and the litigants, and this purpose is especially appropriate for bankruptcy proceedings. If, however, the costs being incurred in civil litigation that led to the adoption of the mandatory initial disclosure system are not presented in bankruptcy proceedings, then the assimilation of the rule into the Bankruptcy Rules seems unwise.

Much of what is contained in Civil Rule 26 is essential in both adversary proceedings and contested matters. Therefore, if the rule is to be limited to its terms as they existed up to

December 1, 2000, Rule 7026 must be amended. A proposal to accomplish such a change follows.

Rule 7026. General Provisions Governing Discovery

1 Except as provided in this rule, Rule 26 F. R. Civ. P. applies in
2 adversary proceedings. Unless the court orders otherwise in a
3 particular proceeding, the provisions of Fed. R. Civ. P. 26(a)(1)
4 (mandatory disclosure), 26(f) (mandatory meeting before schedule
5 conference/discovery plan), 26(a)(2) (disclosure regarding expert
6 testimony), and 26(a)(3) (additional pre-trial disclosure) shall not
7 apply in adversary proceedings.

COMMITTEE NOTE

In 1993, Civil Rule 26 was amended to require initial disclosure of basic information early in the case. Many courts, both district and bankruptcy, opted out of the rule through the enactment of local rules limiting the application of the initial disclosure and the related timing requirements. On December 1, 2000, Civil Rule 26 was further amended to make the disclosure requirements mandatory by preventing courts from opting out of the system by local rule or standing order. The conclusion reached that the discovery disclosure rule should be mandatory for civil actions, however, is not appropriate in most adversary proceedings in the bankruptcy courts. Therefore, the rule is amended to limit the incorporation of Rule 26 by making the initial disclosure requirements inapplicable in adversary proceedings. The court, however, may order that those provisions apply in a particular adversary proceeding.

The initial disclosure requirements of F. R. Civ. P. 26 were intended to expedite the discovery process in civil actions and thereby reduce the time and expenses incurred in those cases due to delays in completing discovery. Those delays generally are not present in the vast majority of adversary proceedings. Following

the timing system of Rule 26, in fact, would likely lead to a delay in the resolution of a number of adversary proceedings. Implementation of the discovery process under that rule also would increase the cost for many litigants in adversary proceedings. Thus, applying all of the initial disclosure provisions of Rule 26 in adversary proceedings would run counter to its stated purpose.

In adversary proceedings in which the initial disclosure provisions would expedite the matter, the court can order that those provisions apply in the proceeding. Since these matters are more likely to be the exception rather than the norm, however, the general rule is that these provisions will not apply absent a specific order of the court.

Accomplishing the change to make the mandatory initial disclosure rule inapplicable to contested matters is unnecessary if Rule 7026 reinstates the local rule opt out authority that was in place in Civil Rule 26 until December 1, 2000. If the Committee believes that the mandatory initial disclosure requirements of Civil Rule 26 should apply in adversary proceedings but not in contested matters, amendment of Rule 9014 would be necessary. Such an amendment is set out below.

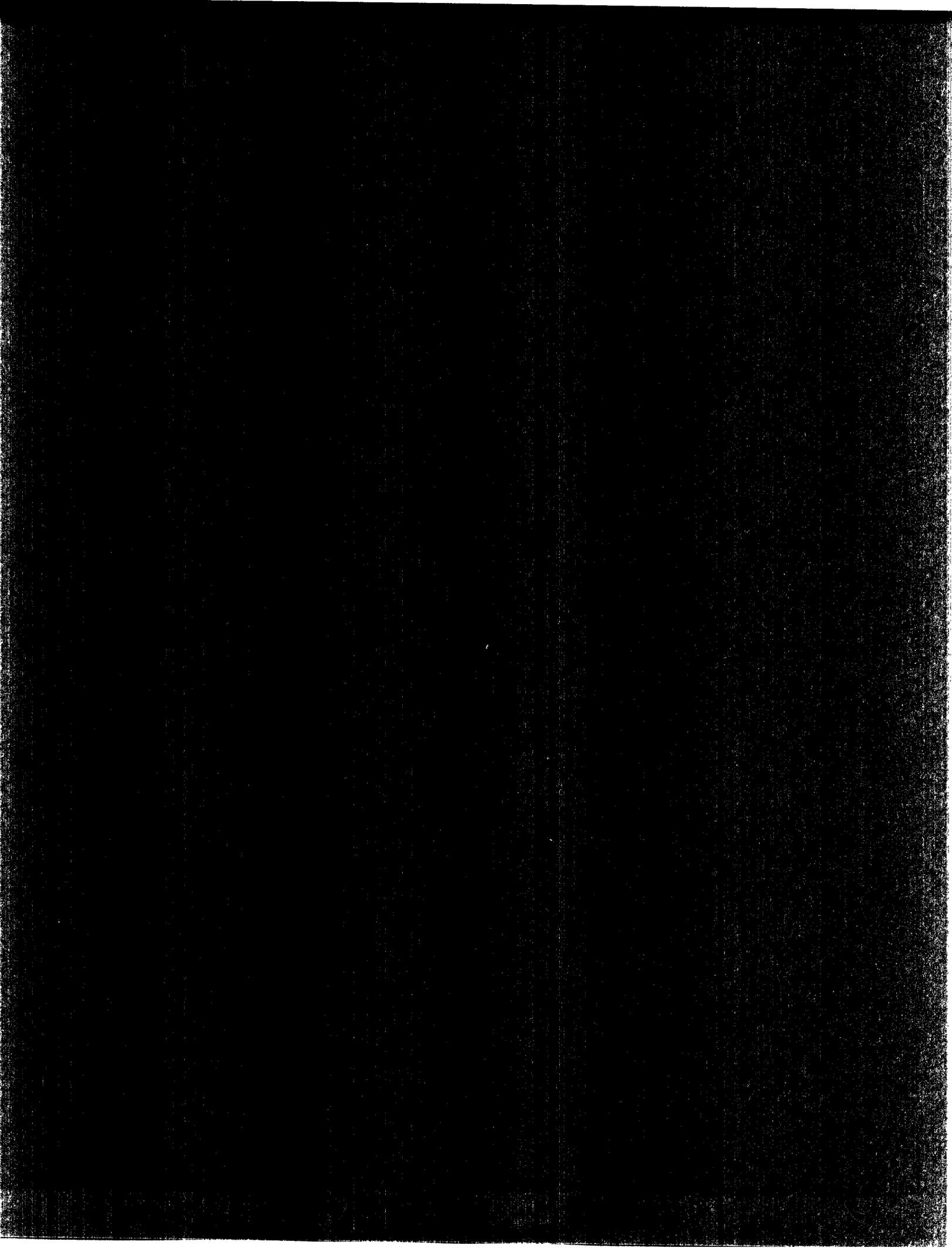
Rule 9014. Contested Matters*

(c) APPLICATION OF PART VII RULES. Unless the court directs otherwise, and except as otherwise provided in this rule, the following rules shall apply: 7009, 7017,7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7062, 7064, 7069, and 7071. The following subdivisions of Fed. R. Civ. P. 26, 26(a)(1) (mandatory disclosure), 26(f) (mandatory meeting before scheduling conference/discovery plan), 26(a)(2)

9 (disclosures regarding expert testimony), and 26(a)(3)
10 (additional pre-trial disclosure) as incorporated by Rule 7026,
11 shall not apply in contested matters. An entity that desires to
12 perpetuate testimony may proceed in the same manner as
13 provided in Rule 7027 for the taking of a deposition before an
14 adversary proceeding. The court may at any stage in a
15 particular matter direct that one or more of the other rules in
16 Part VII shall apply. The court shall give the parties notice of
17 any order issued under this paragraph to afford them a
18 reasonable opportunity to comply with the procedures
19 prescribed by the order.

COMMITTEE NOTE

The rule is amended to provide that the mandatory disclosure requirements of Fed. R. Civ. P. 26, as incorporated by Rule 7026, do not apply in contested matters. The typically short time between the commencement and resolution of most contested matters makes the mandatory disclosure provisions of Rule 26 ineffective. Nevertheless, the court may order in a particular matter that these provisions of the rule apply in a contested matter.



FEDERAL RULES OF CIVIL PROCEDURE 53

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

1 **(a) Required Disclosures; Methods to Discover**

2 **Additional Matter.**

3 **(1) Initial Disclosures.** Except in categories of
 4 proceedings specified in Rule 26(a)(1)(E), or to the extent
 5 otherwise stipulated or directed by order ~~or local rule~~, a
 6 party ~~shall~~ must, without awaiting a discovery request,
 7 provide to other parties:

8 (A) the name and, if known, the address and
 9 telephone number of each individual likely to have
 10 discoverable information that the disclosing party may
 11 use to support its claims or defenses, unless solely for
 12 impeachment ~~relevant to disputed facts alleged with~~
 13 ~~particularity in the pleadings~~, identifying the subjects
 14 of the information;

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54 FEDERAL RULES OF CIVIL PROCEDURE

15 (B) a copy of, or a description by category and
16 location of, all documents, data compilations, and
17 tangible things that are in the possession, custody, or
18 control of the party and that the disclosing party may
19 use to support its claims or defenses, unless solely for
20 impeachment ~~that are relevant to disputed facts~~
21 ~~alleged with particularity in the pleadings;~~

22 (C) a computation of any category of damages
23 claimed by the disclosing party, making available for
24 inspection and copying as under Rule 34 the
25 documents or other evidentiary material, not
26 privileged or protected from disclosure, on which
27 such computation is based, including materials
28 bearing on the nature and extent of injuries suffered;
29 and

30 (D) for inspection and copying as under Rule 34
31 any insurance agreement under which any person

	FEDERAL RULES OF CIVIL PROCEDURE	55	56	F
32	carrying on an insurance business may be liable to		48	
33	satisfy part or all of a judgment which may be entered		49	
34	in the action or to indemnify or reimburse for		50	
35	payments made to satisfy the judgment.		51	
36	<u>(E) The following categories of proceedings are</u>		52	
37	<u>exempt from initial disclosure under Rule 26(a)(1):</u>		53	
38	<u>(i) an action for review on an administrative</u>		54	
39	<u>record;</u>		55	t
40	<u>(ii) a petition for habeas corpus or other</u>		56	2
41	<u>proceeding to challenge a criminal conviction or</u>		57	c
42	<u>sentence;</u>		58	t
43	<u>(iii) an action brought without counsel by a</u>		59	s
44	<u>person in custody of the United States, a state, or</u>		60	t
45	<u>a state subdivision;</u>		61	i
46	<u>(iv) an action to enforce or quash an</u>		62	i
47	<u>administrative summons or subpoena;</u>		63	c
			64	i

56 FEDERAL RULES OF CIVIL PROCEDURE

48 (v) an action by the United States to recover49 benefit payments;50 (vi) an action by the United States to collect51 on a student loan guaranteed by the United States;52 (vii) a proceeding ancillary to proceedings in53 other courts; and54 (viii) an action to enforce an arbitration award.55 ~~Unless otherwise stipulated or directed by the court,~~56 ~~These disclosures must shall be made at or within 14 +0~~57 ~~days after the Rule 26(f) conference meeting of the parties~~58 ~~under subdivision (f); unless a different time is set by~~59 ~~stipulation or court order, or unless a party objects during~~60 ~~the conference that initial disclosures are not appropriate~~61 ~~in the circumstances of the action and states the objection~~62 ~~in the Rule 26(f) discovery plan. In ruling on the~~63 ~~objection, the court must determine what disclosures —~~64 ~~if any — are to be made, and set the time for disclosure.~~

	FEDERAL RULES OF CIVIL PROCEDURE	57	58
65	<u>Any party first served or otherwise joined after the Rule</u>		82
66	<u>26(f) conference must make these disclosures within 30</u>		83
67	<u>days after being served or joined unless a different time is</u>		84
68	<u>set by stipulation or court order. A party <u>must shall</u> make</u>		85
69	its initial disclosures based on the information then		86
70	reasonably available to it and is not excused from making		87
71	its disclosures because it has not fully completed its		88
72	investigation of the case or because it challenges the		89
73	sufficiency of another party's disclosures or because		90
74	another party has not made its disclosures.		91
75	* * * * *		92
76	(3) Pretrial Disclosures. In addition to the		93
77	disclosures required <u>by Rule 26(a)(1) and (2) in the</u>		94
78	<u>preceding paragraphs</u> , a party <u>shall must</u> provide to other		95
79	parties <u>and promptly file with the court</u> the following		96
80	information regarding the evidence that it may present at		97
81	trial other than solely for impeachment purposes:		98

FEDERAL RULES OF CIVIL PROCEDURE

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures shall must be made at least 30 days before trial. Within

99 14 days thereafter, unless a different time is specified by
 100 the court, a party may serve and promptly file a list
 101 disclosing (i) any objections to the use under Rule 32(a)
 102 of a deposition designated by another party under
 103 ~~subparagraph (B)~~ Rule 26(a)(3)(B), and (ii) any objection,
 104 together with the grounds therefor, that may be made to
 105 the admissibility of materials identified under
 106 ~~subparagraph (C)~~ Rule 26(a)(3)(C). Objections not so
 107 disclosed, other than objections under Rules 402 and 403
 108 of the Federal Rules of Evidence, ~~shall be deemed~~ are
 109 waived unless excused by the court for good cause ~~shown~~.

110 ~~(4) Form of Disclosures; Filing.~~ Unless the court
 111 orders otherwise ~~directed by order or local rule~~, all
 112 disclosures under paragraphs Rules 26(a)(1) through (3)
 113 must ~~shall~~ be made in writing, signed, and served, ~~and~~
 114 ~~promptly filed with the court.~~

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60 FEDERAL RULES OF CIVIL PROCEDURE

Committee Note

Purposes of amendments. The Rule 26(a)(1) initial disclosure provisions are amended to establish a nationally uniform practice. The scope of the disclosure obligation is narrowed to cover only information that the disclosing party may use to support its position. In addition, the rule exempts specified categories of proceedings from initial disclosure, and permits a party who contends that disclosure is not appropriate in the circumstances of the case to present its objections to the court, which must then determine whether disclosure should be made. Related changes are made in Rules 26(d) and (f).

The initial disclosure requirements added by the 1993 amendments permitted local rules directing that disclosure would not be required or altering its operation. The inclusion of the "opt out" provision reflected the strong opposition to initial disclosure felt in some districts, and permitted experimentation with differing disclosure rules in those districts that were favorable to disclosure. The local option also recognized that — partly in response to the first publication in 1991 of a proposed disclosure rule — many districts had adopted a variety of disclosure programs under the aegis of the Civil Justice Reform Act. It was hoped that developing experience under a variety of disclosure systems would support eventual refinement of a uniform national disclosure practice. In addition, there was hope that local experience could identify categories of actions in which disclosure is not useful.

A striking array of local regimes in fact emerged for disclosure and related features introduced in 1993. See D. Stienstra, Implementation of Disclosure in United States District Courts, With Specific Attention to Courts' Responses to Selected Amendments to Federal Rule of Civil Procedure 26 (Federal Judicial Center, March 30, 1998) (describing and categorizing local regimes). In its final

report to Congress on the CJRA experience, the Judicial Conference recommended reexamination of the need for national uniformity, particularly in regard to initial disclosure. Judicial Conference, Alternative Proposals for Reduction of Cost and Delay: Assessment of Principles, Guidelines and Techniques, 175 F.R.D. 62, 98 (1997).

At the Committee's request, the Federal Judicial Center undertook a survey in 1997 to develop information on current disclosure and discovery practices. See T. Willging, J. Shapard, D. Stienstra & D. Miletich, Discovery and Disclosure Practice, Problems, and Proposals for Change (Federal Judicial Center, 1997). In addition, the Committee convened two conferences on discovery involving lawyers from around the country and received reports and recommendations on possible discovery amendments from a number of bar groups. Papers and other proceedings from the second conference are published in 39 Boston Col. L. Rev. 517-840 (1998).

The Committee has discerned widespread support for national uniformity. Many lawyers have experienced difficulty in coping with divergent disclosure and other practices as they move from one district to another. Lawyers surveyed by the Federal Judicial Center ranked adoption of a uniform national disclosure rule second among proposed rule changes (behind increased availability of judges to resolve discovery disputes) as a means to reduce litigation expenses without interfering with fair outcomes. Discovery and Disclosure Practice, supra, at 44-45. National uniformity is also a central purpose of the Rules Enabling Act of 1934, as amended, 28 U.S.C. §§ 2072-2077.

These amendments restore national uniformity to disclosure practice. Uniformity is also restored to other aspects of discovery by deleting most of the provisions authorizing local rules that vary the

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number of permitted discovery events or the length of depositions. Local rule options are also deleted from Rules 26(d) and (f).

Subdivision (a)(1). The amendments remove the authority to alter or opt out of the national disclosure requirements by local rule, invalidating not only formal local rules but also informal “standing” orders of an individual judge or court that purport to create exemptions from — or limit or expand — the disclosure provided under the national rule. *See* Rule 83. Case-specific orders remain proper, however, and are expressly required if a party objects that initial disclosure is not appropriate in the circumstances of the action. Specified categories of proceedings are excluded from initial disclosure under subdivision (a)(1)(E). In addition, the parties can stipulate to forgo disclosure, as was true before. But even in a case excluded by subdivision (a)(1)(E) or in which the parties stipulate to bypass disclosure, the court can order exchange of similar information in managing the action under Rule 16.

The initial disclosure obligation of subdivisions (a)(1)(A) and (B) has been narrowed to identification of witnesses and documents that the disclosing party may use to support its claims or defenses. “Use” includes any use at a pretrial conference, to support a motion, or at trial. The disclosure obligation is also triggered by intended use in discovery, apart from use to respond to a discovery request; use of a document to question a witness during a deposition is a common example. The disclosure obligation attaches both to witnesses and documents a party intends to use and also to witnesses and documents the party intends to use if — in the language of Rule 26(a)(3) — “the need arises.”

A party is no longer obligated to disclose witnesses or documents, whether favorable or unfavorable, that it does not intend to use. The obligation to disclose information the party may use connects directly

to the exclusion sanction of Rule 37(c)(1). Because the disclosure obligation is limited to material that the party may use, it is no longer tied to particularized allegations in the pleadings. Subdivision (e)(1), which is unchanged, requires supplementation if information later acquired would have been subject to the disclosure requirement. As case preparation continues, a party must supplement its disclosures when it determines that it may use a witness or document that it did not previously intend to use.

The disclosure obligation applies to "claims and defenses," and therefore requires a party to disclose information it may use to support its denial or rebuttal of the allegations, claim, or defense of another party. It thereby bolsters the requirements of Rule 11(b)(4), which authorizes denials "warranted on the evidence," and disclosure should include the identity of any witness or document that the disclosing party may use to support such denials.

Subdivision (a)(3) presently excuses pretrial disclosure of information solely for impeachment. Impeachment information is similarly excluded from the initial disclosure requirement.

Subdivisions (a)(1)(C) and (D) are not changed. Should a case be exempted from initial disclosure by Rule 26(a)(1)(E) or by agreement or order, the insurance information described by subparagraph (D) should be subject to discovery, as it would have been under the principles of former Rule 26(b)(2), which was added in 1970 and deleted in 1993 as redundant in light of the new initial disclosure obligation.

New subdivision (a)(1)(E) excludes eight specified categories of proceedings from initial disclosure. The objective of this listing is to identify cases in which there is likely to be little or no discovery, or in which initial disclosure appears unlikely to contribute to the

effective development review of the category from the operation of subdivision (f). S "proceedings" rather not properly be labeled parties or the clerk' application of the e generic and are inter when needed, the co gradual evolution in general categories. administrative records that is framed as ar record. The exclusion commonly permits a record. Item (vii), ex other courts, does not the Civil Rules to l Bankruptcy Rules.

Subdivision (a)(1) of the cases in most c Based on 1996 and 19 staff estimate that, n one-third of all civil

The categories of also exempted from from the subdivision is no restriction on c not expected that this is likely to be little

PROCEDURE 63

Because the disclosure is for any use, it is no longer exempt from subdivision (e)(1), if information later is required. As to its disclosures, the document that it did

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ed. Should a case be (E) or by agreement by subparagraph (D) have been under the added in 1970 and new initial disclosure

specified categories of discovery of this listing is to be or no discovery, or to contribute to the

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effective development of the case. The list was developed after a review of the categories excluded by local rules in various districts from the operation of Rule 16(b) and the conference requirements of subdivision (f). Subdivision (a)(1)(E) refers to categories of "proceedings" rather than categories of "actions" because some might not properly be labeled "actions." Case designations made by the parties or the clerk's office at the time of filing do not control application of the exemptions. The descriptions in the rule are generic and are intended to be administered by the parties — and, when needed, the courts — with the flexibility needed to adapt to gradual evolution in the types of proceedings that fall within these general categories. The exclusion of an action for review on an administrative record, for example, is intended to reach a proceeding that is framed as an "appeal" based solely on an administrative record. The exclusion should not apply to a proceeding in a form that commonly permits admission of new evidence to supplement the record. Item (vii), excluding a proceeding ancillary to proceedings in other courts, does not refer to bankruptcy proceedings; application of the Civil Rules to bankruptcy proceedings is determined by the Bankruptcy Rules.

Subdivision (a)(1)(E) is likely to exempt a substantial proportion of the cases in most districts from the initial disclosure requirement. Based on 1996 and 1997 case filing statistics, Federal Judicial Center staff estimate that, nationwide, these categories total approximately one-third of all civil filings.

The categories of proceedings listed in subdivision (a)(1)(E) are also exempted from the subdivision (f) conference requirement and from the subdivision (d) moratorium on discovery. Although there is no restriction on commencement of discovery in these cases, it is not expected that this opportunity will often lead to abuse since there is likely to be little or no discovery in most such cases. Should a

defendant need more time to respond to discovery requests filed at the beginning of an exempted action, it can seek relief by motion under Rule 26(c) if the plaintiff is unwilling to defer the due date by agreement.

Subdivision (a)(1)(E)'s enumeration of exempt categories is exclusive. Although a case-specific order can alter or excuse initial disclosure, local rules or "standing" orders that purport to create general exemptions are invalid. *See* Rule 83.

The time for initial disclosure is extended to 14 days after the subdivision (f) conference unless the court orders otherwise. This change is integrated with corresponding changes requiring that the subdivision (f) conference be held 21 days before the Rule 16(b) scheduling conference or scheduling order, and that the report on the subdivision (f) conference be submitted to the court 14 days after the meeting. These changes provide a more orderly opportunity for the parties to review the disclosures, and for the court to consider the report. In many instances, the subdivision (f) conference and the effective preparation of the case would benefit from disclosure before the conference, and earlier disclosure is encouraged.

The presumptive disclosure date does not apply if a party objects to initial disclosure during the subdivision (f) conference and states its objection in the subdivision (f) discovery plan. The right to object to initial disclosure is not intended to afford parties an opportunity to "opt out" of disclosure unilaterally. It does provide an opportunity for an objecting party to present to the court its position that disclosure would be "inappropriate in the circumstances of the action." Making the objection permits the objecting party to present the question to the judge before any party is required to make disclosure. The court must then rule on the objection and determine what disclosures — if any — should be made. Ordinarily, this determination would be included

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in the Rule 16(b) scheduling order, but the court could handle the matter in a different fashion. Even when circumstances warrant suspending some disclosure obligations, others — such as the damages and insurance information called for by subdivisions (a)(1)(C) and (D) — may continue to be appropriate.

The presumptive disclosure date is also inapplicable to a party who is “first served or otherwise joined” after the subdivision (f) conference. This phrase refers to the date of service of a claim on a party in a defensive posture (such as a defendant or third-party defendant), and the date of joinder of a party added as a claimant or an intervenor. Absent court order or stipulation, a new party has 30 days in which to make its initial disclosures. But it is expected that later-added parties will ordinarily be treated the same as the original parties when the original parties have stipulated to forgo initial disclosure, or the court has ordered disclosure in a modified form.

Subdivision (a)(3). The amendment to Rule 5(d) forbids filing disclosures under subdivisions (a)(1) and (a)(2) until they are used in the proceeding, and this change is reflected in an amendment to subdivision (a)(4). Disclosures under subdivision (a)(3), however, may be important to the court in connection with the final pretrial conference or otherwise in preparing for trial. The requirement that objections to certain matters be filed points up the court’s need to be provided with these materials. Accordingly, the requirement that subdivision (a)(3) materials be filed has been moved from subdivision (a)(4) to subdivision (a)(3), and it has also been made clear that they — and any objections — should be filed “promptly.”

Subdivision (a)(4). The filing requirement has been removed from this subdivision. Rule 5(d) has been amended to provide that disclosures under subdivisions (a)(1) and (a)(2) must not be filed until used in the proceeding. Subdivision (a)(3) has been amended to

FEDERAL RULES OF CIVIL PROCEDURE 67

require that the disclosures it directs, and objections to them, be filed promptly. Subdivision (a)(4) continues to require that all disclosures under subdivisions (a)(1), (a)(2), and (a)(3) be in writing, signed, and served.

“Shall” is replaced by “must” under the program to conform amended rules to current style conventions when there is no ambiguity.

GAP Report

The Advisory Committee recommends that the amendments to Rules 26(a)(1)(A) and (B) be changed so that initial disclosure applies to information the disclosing party “may use to support” its claims or defenses. It also recommends changes in the Committee Note to explain that disclosure requirement. In addition, it recommends inclusion in the Note of further explanatory matter regarding the exclusion from initial disclosure provided in new Rule 26(a)(1)(E) for actions for review on an administrative record and the impact of these exclusions on bankruptcy proceedings. Minor wording improvements in the Note are also proposed.

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

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(b) **Discovery Scope and Limits.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

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5 **(1) In General.** Parties may obtain discovery
6 regarding any matter, not privileged, that which is
7 relevant to ~~the subject matter involved in the pending~~
8 ~~action, whether it relates to the claim or defense of the~~
9 ~~party seeking discovery or to the claim or defense of any~~
10 other party, including the existence, description, nature,
11 custody, condition, and location of any books, documents,
12 or other tangible things and the identity and location of
13 persons having knowledge of any discoverable matter.
14 For good cause, the court may order discovery of any
15 matter relevant to the subject matter involved in the
16 action. Relevant The information sought need not be
17 admissible at the trial if the discovery information sought
18 appears reasonably calculated to lead to the discovery of

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19 admissible evidence. All discovery is subject to the
 20 limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

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Committee Note

Subdivision (b)(1). In 1978, the Committee published for comment a proposed amendment, suggested by the Section of Litigation of the American Bar Association, to refine the scope of discovery by deleting the "subject matter" language. This proposal was withdrawn, and the Committee has since then made other changes in the discovery rules to address concerns about overbroad discovery. Concerns about costs and delay of discovery have persisted nonetheless, and other bar groups have repeatedly renewed similar proposals for amendment to this subdivision to delete the "subject matter" language. Nearly one-third of the lawyers surveyed in 1997 by the Federal Judicial Center endorsed narrowing the scope of discovery as a means of reducing litigation expense without interfering with fair case resolutions. Discovery and Disclosure Practice, supra, at 44-45 (1997). The Committee has heard that in some instances, particularly cases involving large quantities of discovery, parties seek to justify discovery requests that sweep far beyond the claims and defenses of the parties on the ground that they nevertheless have a bearing on the "subject matter" involved in the action.

The amendments proposed for subdivision (b)(1) include one element of these earlier proposals but also differ from these proposals in significant ways. The similarity is that the amendments describe the scope of party-controlled discovery in terms of matter relevant to the claim or defense of any party. The court, however, retains

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authority to order discovery of any matter relevant to the subject matter involved in the action for good cause. The amendment is designed to involve the court more actively in regulating the breadth of sweeping or contentious discovery. The Committee has been informed repeatedly by lawyers that involvement of the court in managing discovery is an important method of controlling problems of inappropriately broad discovery. Increasing the availability of judicial officers to resolve discovery disputes and increasing court management of discovery were both strongly endorsed by the attorneys surveyed by the Federal Judicial Center. *See Discovery and Disclosure Practice, supra*, at 44. Under the amended provisions, if there is an objection that discovery goes beyond material relevant to the parties' claims or defenses, the court would become involved to determine whether the discovery is relevant to the claims or defenses and, if not, whether good cause exists for authorizing it so long as it is relevant to the subject matter of the action. The good-cause standard warranting broader discovery is meant to be flexible.

The Committee intends that the parties and the court focus on the actual claims and defenses involved in the action. The dividing line between information relevant to the claims and defenses and that relevant only to the subject matter of the action cannot be defined with precision. A variety of types of information not directly pertinent to the incident in suit could be relevant to the claims or defenses raised in a given action. For example, other incidents of the same type, or involving the same product, could be properly discoverable under the revised standard. Information about organizational arrangements or filing systems of a party could be discoverable if likely to yield or lead to the discovery of admissible information. Similarly, information that could be used to impeach a likely witness, although not otherwise relevant to the claims or defenses, might be properly discoverable. In each instance, the determination whether such information is discoverable because it is

relevant to the claims or defenses depends on the circumstances of the pending action.

The rule change signals to the court that it has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings. In general, it is hoped that reasonable lawyers can cooperate to manage discovery without the need for judicial intervention. When judicial intervention is invoked, the actual scope of discovery should be determined according to the reasonable needs of the action. The court may permit broader discovery in a particular case depending on the circumstances of the case, the nature of the claims and defenses, and the scope of the discovery requested.

The amendments also modify the provision regarding discovery of information not admissible in evidence. As added in 1946, this sentence was designed to make clear that otherwise relevant material could not be withheld because it was hearsay or otherwise inadmissible. The Committee was concerned that the "reasonably calculated to lead to the discovery of admissible evidence" standard set forth in this sentence might swallow any other limitation on the scope of discovery. Accordingly, this sentence has been amended to clarify that information must be relevant to be discoverable, even though inadmissible, and that discovery of such material is permitted if reasonably calculated to lead to the discovery of admissible evidence. As used here, "relevant" means within the scope of discovery as defined in this subdivision, and it would include information relevant to the subject matter involved in the action if the court has ordered discovery to that limit based on a showing of good cause.

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Finally, a sentence has been added calling attention to the limitations of subdivision (b)(2)(i), (ii), and (iii). These limitations apply to discovery that is otherwise within the scope of subdivision (b)(1). The Committee has been told repeatedly that courts have not implemented these limitations with the vigor that was contemplated. *See 8 Federal Practice & Procedure* § 2008.1 at 121. This otherwise redundant cross-reference has been added to emphasize the need for active judicial use of subdivision (b)(2) to control excessive discovery. *Cf. Crawford-El v. Britton*, 118 S. Ct. 1584, 1597 (1998) (quoting Rule 26(b)(2)(iii) and stating that "Rule 26 vests the trial judge with broad discretion to tailor discovery narrowly").

GAP Report

The Advisory Committee recommends changing the rule to authorize the court to expand discovery to any "matter" — not "information" — relevant to the subject matter involved in the action. In addition, it recommends additional clarifying material in the Committee Note about the impact of the change on some commonly disputed discovery topics, the relationship between cost-bearing under Rule 26(b)(2) and expansion of the scope of discovery on a showing of good cause, and the meaning of "relevant" in the revision to the last sentence of current subdivision (b)(1). In addition, some minor clarifications of language changes have been proposed for the Committee Note.

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

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2 (b) Discovery and Limits.

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(2) **Limitations.** By order ~~or by local rule~~, the court may alter the limits in these rules on the number of depositions and interrogatories; ~~or and may also limit the length of depositions under Rule 30, and~~ By order or local rule, the court may also limit the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in

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20 controversy, the parties' resources, the importance of the
21 issues at stake in the litigation, and the importance of the
22 proposed discovery in resolving the issues. The court
23 may act upon its own initiative after reasonable notice or
24 pursuant to a motion under subdivision Rule 26(c).
25 * * * * *

Committee Note

Subdivision (b)(2). Rules 30, 31, and 33 establish presumptive national limits on the numbers of depositions and interrogatories. New Rule 30(d)(2) establishes a presumptive limit on the length of depositions. Subdivision (b)(2) is amended to remove the previous permission for local rules that establish different presumptive limits on these discovery activities. There is no reason to believe that unique circumstances justify varying these nationally-applicable presumptive limits in certain districts. The limits can be modified by court order or agreement in an individual action, but "standing" orders imposing different presumptive limits are not authorized. Because there is no national rule limiting the number of Rule 36 requests for admissions, the rule continues to authorize local rules that impose numerical limits on them. This change is not intended to interfere with differentiated case management in districts that use this technique by case-specific order as part of their Rule 16 process.

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Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(d) **Timing and Sequence of Discovery.** Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), or when authorized under these rules or by local rule, order, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by subdivision Rule 26(f). Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall does not operate to delay any other party's discovery.

(f) **Conference Meeting of Parties; Planning for Discovery.** Except in categories of proceedings actions

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FEDERAL RULES OF CIVIL PROCEDURE 77

33 (2) the subjects on which discovery may be needed,
34 when discovery should be completed, and whether
35 discovery should be conducted in phases or be limited to
36 or focused upon particular issues;

37 (3) what changes should be made in the limitations on
38 discovery imposed under these rules or by local rule, and
39 what other limitations should be imposed; and

40 (4) any other orders that should be entered by the
41 court under subdivision Rule 26(c) or under Rule 16(b)
42 and (c).

43 The attorneys of record and all unrepresented parties that have
44 appeared in the case are jointly responsible for arranging the
45 conference and being present or represented at the meeting,
46 for attempting in good faith to agree on the proposed
47 discovery plan, and for submitting to the court within 14~~10~~
48 days after the conference meeting a written report outlining
49 the plan. A court may order that the parties or attorneys

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50 attend the conference in person. If necessary to comply with
 51 its expedited schedule for Rule 16(b) conferences, a court
 52 may by local rule (i) require that the conference between the
 53 parties occur fewer than 21 days before the scheduling
 54 conference is held or a scheduling order is due under Rule
 55 16(b), and (ii) require that the written report outlining the
 56 discovery plan be filed fewer than 14 days after the
 57 conference between the parties, or excuse the parties from
 58 submitting a written report and permit them to report orally
 59 on their discovery plan at the Rule 16(b) conference.

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Committee Note

Subdivision (d). The amendments remove the prior authority to exempt cases by local rule from the moratorium on discovery before the subdivision (f) conference, but the categories of proceedings exempted from initial disclosure under subdivision (a)(1)(E) are excluded from subdivision (d). The parties may agree to disregard the moratorium where it applies, and the court may so order in a case, but "standing" orders altering the moratorium are not authorized.

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Subdivision (f). As in subdivision (d), the amendments remove the prior authority to exempt cases by local rule from the conference requirement. The Committee has been informed that the addition of the conference was one of the most successful changes made in the 1993 amendments, and it therefore has determined to apply the conference requirement nationwide. The categories of proceedings exempted from initial disclosure under subdivision (a)(1)(E) are exempted from the conference requirement for the reasons that warrant exclusion from initial disclosure. The court may order that the conference need not occur in a case where otherwise required, or that it occur in a case otherwise exempted by subdivision (a)(1)(E). "Standing" orders altering the conference requirement for categories of cases are not authorized.

The rule is amended to require only a "conference" of the parties, rather than a "meeting." There are important benefits to face-to-face discussion of the topics to be covered in the conference, and those benefits may be lost if other means of conferring were routinely used when face-to-face meetings would not impose burdens. Nevertheless, geographic conditions in some districts may exact costs far out of proportion to these benefits. The amendment allows the court by case-specific order to require a face-to-face meeting, but "standing" orders so requiring are not authorized.

As noted concerning the amendments to subdivision (a)(1), the time for the conference has been changed to at least 21 days before the Rule 16 scheduling conference, and the time for the report is changed to no more than 14 days after the Rule 26(f) conference. This should ensure that the court will have the report well in advance of the scheduling conference or the entry of the scheduling order.

Since Rule 16 was amended in 1983 to mandate some case management activities in all courts, it has included deadlines for

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completing these tasks to ensure that all courts do so within a reasonable time. Rule 26(f) was fit into this scheme when it was adopted in 1993. It was never intended, however, that the national requirements that certain activities be completed by a certain time should delay case management in districts that move much faster than the national rules direct, and the rule is therefore amended to permit such a court to adopt a local rule that shortens the period specified for the completion of these tasks.

“Shall” is replaced by “must,” “does,” or an active verb under the program to conform amended rules to current style conventions when there is no ambiguity.

GAP Report

The Advisory Committee recommends adding a sentence to the published amendments to Rule 26(f) authorizing local rules shortening the time between the attorney conference and the court’s action under Rule 16(b), and addition to the Committee Note of explanatory material about this change to the rule. This addition can be made without republication in response to public comments.

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Implementation of Selected Amendments to Federal Rule of Civil Procedure 26 by United States Bankruptcy Courts

Elizabeth C. Wiggins and Shannon Wheatman
Research Division
Federal Judicial Center

September 2000

On December 1, 1993, amendments to the Federal Rules of Civil Procedure went into effect. Among these, amended Fed. R. Civ. P. 26(a) requires the disclosure of certain information without awaiting a formal discovery request and amended Fed. R. Civ. P. 26(d) and (f) provide for the deferral of formal discovery until parties have met to discuss and plan discovery and to make or arrange for the exchange of discloseable information. (See the attached description of the amendments.) Fed. R. Bankr. P. 7026 makes Fed. R. Civ. P. 26 applicable to adversary proceedings and by virtue of Fed. R. Bankr. P. 9014, it is applicable to contested matters unless the courts otherwise directs.

A significant feature of amended Civil Rule 26 is the option given to courts to exempt all cases or categories of cases from some or all of the rule's requirements. In 1994-95, the Federal Judicial Center summarized whether United States Bankruptcy Courts had opted out of the provisions and presented that information to the Advisory Committee on Bankruptcy Rules.

Findings of the 1994-1995 FJC Study

We found that many courts had modified the national discovery rules for bankruptcy practice in their districts and that other courts were likely to in the future. Specifically, at the time of our 1995 report, we found that for adversary proceedings, 50 courts opted out of 26(a)(1), 26 opted out of 26(a)(2-3), and 43 courts opted out of 26(f). Other courts were not enforcing 26(a)(1), 26(a)(2)-(3), and 26(f) although they had not formally opted out of the provisions. In addition, a number of courts had opted out of only subparts of the provisions.

In addition, and not surprisingly, even more courts had opted out of the amended rule provisions for contested matters. Sixty-seven courts opted out of 26(a)(1), 42 opted out of 26(a)(2-3), and 59 courts opted out of 26(f). As with adversary proceedings, other courts were not enforcing 26(a)(1), 26(a)(2)-(3), and 26(f) for contested matters although they had not formally opted out of the provisions. And again, a number of courts had opted out of only subparts of the provisions.

The 2000 amendments

A number of amendments to the 1993 disclosure requirements are scheduled to take effect this December. The amendments narrow the scope of the initial disclosure obligation under 26(a)(1) to cover only information that the disclosing party may use to support its position. They also remove the authority to "opt out" of or modify this requirement by local rule or standing order. At the same time, they exclude specified categories of proceedings from the initial disclosure requirements, and permit any party to object that disclosure is not appropriate for the action and thereby submit to the court the question of whether disclosure should occur. The changes also provide for disclosure by added parties and make a slight change in the timing of initial disclosures. In addition, the amendments remove the present authority to exempt cases by local rule from the moratorium on discovery before the Rule 26(f) conference, but exempt from that moratorium the categories of proceedings exempt from initial disclosure.

During the public comment period, Bankruptcy Judge Louise De Carl Adler noted that many bankruptcy courts have opted out of the disclosure provisions. She questioned whether the elimination of the opt-out authority would now make bankruptcy court litigation subject to the disclosure requirements, and whether bankruptcy court litigation fell within the exempt category of "a proceeding ancillary to proceedings in other courts." In response, the Civil Rules Committee added language to the Note accompanying the amendments indicating that bankruptcy proceedings do not fall within that exemption and that "application of the Civil Rules to bankruptcy proceedings is determined by the Bankruptcy Rules." One might question whether the status quo in the bankruptcy courts can be maintained without further action, given the Bankruptcy Rules make Civil Rule 26 applicable without modification to adversary proceedings, and unless otherwise ordered, to contested matters, and in December, that rule will no longer allow opt-outs.

Update of the FJC Study

To help assess the effect these changes will have for the bankruptcy courts, we have collected updated information from the courts, which is summarized in the attached chart. The summary should be complete within the month.

The chart is arranged by circuit, and within the circuit, alphabetically by district. If the responding court made a distinction between adversary proceedings and contested matters, that distinction is made in the chart. Column 1 shows which parts of Rule 26(a)(1-3) are in effect, either because the court explicitly adopted the provision or because the court did not explicitly reject the provision. Column 2 shows which courts have clearly opted out of parts or all of these provisions. Columns 3 and 4 contain information about the courts' requirements for timing and sequence of discovery and their treatment of the 26(f) requirements of a meeting prior to initiation of formal discovery.

Enforcement of 26(d) is dependent on 26(f), so these columns should be read together. Column 5 notes other discovery-related requirements in effect in the districts to the extent we were provided that information. Column 6 provides the number of the local rule adopted or court order issued in response to amended Rule 26, if any, and Column 7 indicates which courts reported that they had not yet made a decision regarding the amendments or had made only a provisional decision.

Some technicalities and nuances may have been lost in our summary of the information. Thus, the chart is best used as an *overview* of the bankruptcy courts' responses to amended Rule 26 and their disclosure requirements. Users who need to know specific requirements—for example, attorneys handling cases in bankruptcy court—should not rely on these tables nor cite them as legal authority.

Description of Selected Amendments to Federal Rule of Civil Procedure 26

Rule 26(a)(1), Initial Disclosure. Except as otherwise stipulated or as directed by order or local rule, a party must provide, without awaiting a discovery request, the following information at or within ten days of the meeting of counsel required by Rule 26(f):

- name, address, and telephone number of all persons likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, with identification of the subjects of the information;
- a copy or description by category and location of all documents, data compilations, and tangible things in the party's possession, custody, or control that are relevant to disputed facts alleged with particularity in the pleadings;
- computation of damages claimed, with supporting documentation to be available for copying or inspection; and
- insurance policies that may satisfy the judgment, to be available for inspection or copying.

Rule 26(a)(2), Expert Disclosure. Parties must disclose the identity of persons who may testify as experts at trial [(a)(2)(A)] and, except as otherwise stipulated or as directed by the court, must provide a written report prepared and signed by the expert [(a)(2)(B)] containing:

- a complete statement of all opinions to be expressed by the expert and the basis for them;
- the data or other information considered by the expert in forming the opinions;
- exhibits to be used to summarize or support the opinions;
- qualifications of the expert;
- compensation to be paid the expert; and
- a list of cases in which the expert has testified at trial or by deposition in the last four years.

In the absence of other directions by the court, disclosure of experts must be made at least 90 days before the case is to be ready for trial or within 30 days of another party's disclosure when intended only to contradict or rebut that disclosure.

Rule 26(a)(3), Pretrial Disclosure. A party must provide the following information about the evidence it may present at trial other than solely for impeachment purposes:

- name, address, and telephone number of each witness, separately identifying those the party expects to call and those it may call if necessary;
- list of witnesses whose testimony is expected to be presented by deposition and, if the deposition was not taken stenographically, a transcript of the pertinent portions; and
- a list or categorization of documents or other exhibits, including summaries of evidence, separately identifying those the party expects to offer and those it may offer if necessary.

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days of this disclosure, certain objections [specified in the rule] must be made and if not made are waived unless excused by the court for good cause shown.

Rule 26(d), Timing and Sequence of Discovery. The first sentence of Rule 26(d) states that, except as authorized under the federal rules or by local rule, order, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by Rule 26(f). The remainder of the rule is unchanged—formal discovery may proceed as under the old rule.

Rule 26(f), Meeting of Counsel, Written Discovery Plan. Except in actions exempted by local rule or when otherwise ordered, parties must meet at least 14 days before a Rule 16(b) scheduling conference is held or a scheduling order is due to:

- discuss the nature and basis of their claims and defenses and the possibility of settlement;
- make or arrange to make the disclosures required by Rule 26(a)(1); and
- develop a written discovery plan, which must be submitted to the court within 10 days of the meeting.

FEDERAL BANKRUPTCY COURT IMPLEMENTATION OF 1993 AMENDMENTS TO FED. R. CIV. P. 26

ELIZABETH C. WIGGINS AND SHANNON WHEATMAN
FEDERAL JUDICIAL CENTER

SEPTEMBER 2000
REVISED TABLE

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Circuit	District	Provisions of FRCP 26(a)(1)-(3) that are in effect	Provisions of FRCP 26(a)(1)-(3) that are not in effect	FRCP 26(d) (Timing and Sequence of Discovery)	FRCP 26(f) (Meeting of Parties)	Other related requirements in effect	Bankruptcy or District Court Order or Local Rule, if any	Court has not yet made decision or has made only a provisional decision
00DC1	D. D.C.	26(a)(2) & (3) are in effect for adversary proceedings.	Opted out of 26(a)(1) for adversary proceedings, and 26(a)(1)-(3) for contested matters, unless otherwise ordered.	Opted out of 26(d) for adversary proceedings and contested matters, unless otherwise ordered.	In effect.		Local Bankruptcy Court Rule 7026-1.	

¹ The information in the table is derived from orders and local rules issued or adopted by district or bankruptcy courts subsequent to or in anticipation of the federal rule amendments and from discussions with bankruptcy and district court clerks and other court staff. The table should not be cited as legal authority or substituted for a careful examination of federal or local rules and court orders. This table is a revision of the one presented to the Advisory Committee on Bankruptcy Rules at its meeting on September 21, 1994. Naomi Medvin and F. James Kearney helped prepare that table and the accompanying report.

Column 1 shows which parts of Rule 26(a)(1)-(3) are in effect, either because the court explicitly adopted the provision or because the court did not explicitly reject the provision. Column 2 shows which courts have clearly opted out of parts or all of these provisions. Columns 3 and 4 contain information about the courts' requirements for timing and sequence of discovery and their adoption of 26(f) requirements of a meeting prior to initiation of formal discovery. Enforcement of 26(d) is dependent on 26(f), so these columns should be read together. Column 5 notes other discovery-related requirements in effect in the districts to the extent we were provided that information. Column 6 specifies the local rule adopted or court order issued in response to amended Rule 26, if any, and Column 7 indicates which courts reported that they had not yet made a decision regarding the amendments or had made only a provisional decision.

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
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01	D. Mass.	Opted out of 26(a)(1)-(3) for adversary proceedings and contested matters unless otherwise ordered in a particular case.	Opted out of 26(d) for adversary proceedings and contested matters unless otherwise ordered in a particular case.	Opted out of 26(f) for adversary proceedings and contested matters unless otherwise ordered in a particular case.	L.B.R. 7026-1(b) requires automatic disclosure similar to 26(a)(1)(A), & (B) within 30 days of filing an answer or denial of a motion to dismiss a complaint or after the Court orders the application of Part VII off the FRBP in a contested matter. Disclosure of expert testimony follows 26(a)(2)(B) except that experts only need to list cases in the past two years in which they have testified.	Local Bankruptcy Court Rule 7026-1.	
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Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
01	D. Me.	No explicit rejection of 26(a)(1)-(3) for contested matters.	Opted out of 26(a)(1) for adversary proceedings. Scope, sequence and timing of disclosures called for by 26(a)(2) & (3) are determined on a proceeding-by proceeding basis.	No explicit rejection of 26(d) for contested matters or adversary proceedings. Inoperative for adversary proceedings due to non-implementation of 26(f).	26(f) not in effect for adversary proceedings. No explicit rejection for contested matters.	Discovery governed by the pretrial scheduling order pursuant to LBR 7016(d). Prior to filing discovery motions, counsel shall meet to resolve disputes. See LBR 7026 (b)(1).	Local Bankruptcy Court Rule 7026-1.	
01	D. N.H.	26(a)(2)(A) & (B) when ordered by the court or if the court has not established the time for disclosure at the time set by 26(a)(3). 26(a)(3) in effect when such disclosure is mandated by 7016-2	Opted out of 26(a)(1), unless otherwise ordered.	26(d) in effect.	26(f) in effect except parties should meet "as soon as practical" (rather than "at least 14 days") before the preliminary pretrial conference. 26(f) not in effect for pro se cases.		Local Bankruptcy Court Rule 7026-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
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01	D. P.R.		Opted out of 26(a)(1)-(3) for adversary proceedings and contested matters, unless otherwise ordered in a particular case.	Opted out of 26(d) for adversary proceedings and contested matters, unless otherwise ordered in a particular case.	Opted out of 26(f) for adversary proceedings and contested matters, unless otherwise ordered in a particular case.		Bankruptcy Court Joint Procedural Order No. 94-3	
01	D. R.I.	26(a)(2) & (3) in adversary proceedings shall be made in the joint pre-trial order filed pursuant to 7016-1. No explicit rejection for contested matters.	Opted out of 26(a)(1) for adversary proceedings. No explicit rejection for contested matters.	No explicit rejection of 26(d). Inoperative in adversary proceedings due to non-implementation of 26(f).	Opted out for adversary proceedings. No explicit rejection for contested matters.		Local Bankruptcy Court Rule 7026-1.	
02	D. Conn.	No explicit rejection of 26(a)(2) & (3).	Opted out of 26(a)(1).	No explicit rejection of 26(d).	No explicit rejection of 26(f).		Local Civil Rule 37.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
02	E.D. N.Y.		Not in effect at this time.	Not in effect at this time.	Not in effect at this time.		None	Clerk reports that disclosure rules require further study by the District Court. Amendments not yet addressed formally by the Bankruptcy Court.
02	N.D. N.Y.		Opted out of 26(a)(1)-(3) for adversary proceedings and contested matters unless otherwise ordered in a given proceeding.	Opted out of 26(d) for adversary proceedings and contested matters unless otherwise ordered in a given proceeding.	Opted out of 26(f) for adversary proceedings and contested matters unless otherwise ordered by the court.		Local Bankruptcy Court Rule 7026-1.	
02	S.D. N.Y.	No explicit rejection of 26(a)(2) & (3).	Opted out of 26(a)(1) for bankruptcy cases and proceedings.	Opted out of deferral of disclosure requirement for bankruptcy cases and proceedings. Inoperative due to non- implementation of 26(f).	Opted out for bankruptcy cases and proceedings.		Local Bankruptcy Court Rule 7026-2 and Civil Rule 26.4.	

		1	2	3	4	5	6	7
Circuit	District	Provisions of FRCP 26(a)(1)-(3) that are in effect	Provisions of FRCP 26(a)(1)-(3) that are not in effect	FRCP 26(d) (Timing and Sequence of Discovery)	FRCP 26(f) (Meeting of Parties)	Other related requirements in effect	Bankruptcy or District Court Order or Local Rule, if any	Court has not yet made decision or has made only a provisional decision
02	W.D. N.Y.		Opted out of 26(a)(1)-(3) for adversary proceedings and contested matters.	Opted out of 26(d) for adversary proceedings and contested matters.	Opted out of 26(f) for adversary proceedings and contested matters.	By Administrative Order of Aug. 4, 1994, an individual Bankruptcy Judge will determine at the initial Rule 16 scheduling conference, the extent, if any, that the requirements apply to a particular action.	Local Bankruptcy Court Rule 7026.	
02	D. Vt.	No explicit rejection of 26(a)(1)-(3) for adversary proceedings.	Opted out of 26(a) (1)-(3) for contested matters unless specifically ordered by the court.	Opted out of 26(d) for contested matters unless specifically ordered by the court. No explicit rejection of rule for adversary proceedings.	Opted out of 26(f) for contested matters unless specifically ordered by the court. No explicit rejection of rule for adversary proceedings.		Bankruptcy Court General Order 93-6	
03	D. Del.	26(a)(1) - (3) appear to be in effect.		26(d) appears to be in effect.	26(f) appears to be in effect.		Local District Court Rules 5.4 and 16.2.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
03	D. N.J.	26(a)(1)-(3) are in effect, in the discretion of the court.		No explicit rejection of 26(d).	In effect, in the discretion of the court.		Local Bankruptcy Court Rule 7026-1 & Civil Rule 26.1	
03	E.D. Pa.		Opted out of 26(a)(1)-(3) unless otherwise ordered.	Opted out of 26(d) unless otherwise ordered	Opted out of 26(f) unless otherwise ordered.		Local Bankruptcy Court Rule 7026-1.	
03	M.D. Pa.	No explicit rejection of 26(a)(1)-(3) for contested matters.	Opted out of 26(a)(1)-(3) for adversary proceedings, unless requested by counsel.	No explicit rejection of 26(d). Inoperative for adversary proceedings due to non- implementation of 26(f).	Opted out of 26(f) for adversary proceedings. No explicit rejection of 26(f) for contested matters.		Local Bankruptcy Rule 7026.	
03	W.D. Pa.	No explicit rejection of 26(a)(2) and (3).	Opted out of 26(a)(1).	Opted out of 26(d).	Opted out of 26(f).		Bankruptcy Court Memorandum Order of Dec. 20, 1993 (consistent with District Court Memorandum Order of Dec. 10, 1993)	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
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03	D. V.I.							A study committee appointed by the Chief Judge is reviewing amendments to make recommendations for implementation and proposed local rule changes to the court. NEED TO FOLLOWUP WITH COURT.
04	D. Md.	No explicit rejection of 26(a)(2) and 26(a)(3) for adversary proceedings and contested matters. No explicit rejection of 26(a)(1) for certain adversary proceedings.	Opted out of 26(a)(1) for all contested matters, and for adversary proceedings seeking to revoke an Order of Confirmation of a Chapt. 11, 12, or 13 plan.	26(d) in effect only where meeting of the parties is required; not for adversary proceedings seeking to revoke an Order of Confirmation of a Chapt. 11, 12, or 13 plan, and not for contested matters.	Opted out of 26(f) for all contested matters, and for adversary proceedings seeking to revoke an Order of Confirmation of a Chapt. 11, 12, or 13 plan.		Local Bankruptcy Court Rule 7026-1.	

		1	2	3	4	5	6	7
Circuit	District	Provisions of FRCP 26(a)(1)-(3) that are in effect	Provisions of FRCP 26(a)(1)-(3) that are not in effect	FRCP 26(d) (Timing and Sequence of Discovery)	FRCP 26(f) (Meeting of Parties)	Other related requirements in effect	Bankruptcy or District Court Order or Local Rule. If any	Court has not yet made decision or has made only a provisional decision
04	E.D. N.C.	For adversary proceedings, unless counsel agree to an earlier date, disclosures required by 26(a) to be made at time and under circumstances as directed in scheduling order. Moreover, requirements of 26(a)(3) superseded by requirements in Bankruptcy Local Rule 7016.2.	Opted out of 26(a)(1)-(3) for contested matters.	No explicit rejection of 26(d).	No explicit rejection of 26(f).	For adversary proceedings, unless counsel agree to an earlier date, disclosures required by 26(a) to be made at time and under circumstances as directed in scheduling order. Moreover, requirements of 26(a)(3) superseded by requirements in Bankruptcy Local Rule 7016.2.	L.B.R. 7016.1, 7016.2 and 9014.1	
04	M.D. N.C.	No explicit rejection of 26(a)(2) & (3) for adversarial proceedings and contested matters.	Opted out of 26(a)(1) for adversarial proceedings and contested matters.	No explicit rejection of 26(d).	No explicit rejection of 26(f).		Local Bankruptcy Court Rule 7026-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
04	W.D. N.C.	26(a)(1)-(3) in effect for adversarial proceedings to recover money or property having a value greater than \$75,000.	26(a)(1)-(3) does not apply to contested matters, unless otherwise ordered.	26(d) applicable if 26(f) applies.	26(f) applicable for any adversary proceeding to recover money or property having a value greater than \$75,000. 26(f) not applicable for contested matters, unless otherwise ordered.	Requirements of 26(a)(3) deemed met if the parties provide that information in the Joint Pretrial Order.	Local Bankruptcy Court Rule 7026-1.	
04	D. S. C.	No explicit rejection of 26(a)(2)(A) or 26(a)(3) for adversary matters.	Opted out of 26(a)(1) - (3) for contested matters, unless otherwise ordered by the court. Opted out of 26(a)(1) and 26(a)(2)(B)& (C) for adversary proceedings, unless otherwise ordered by the court.	No explicit rejection of 26(d). Inoperative due to non-implementation of 26(f).	Opted out of 26(f) for contested matters and adversary proceedings, unless otherwise ordered by the court.	Requirements of 26(a)(3) deemed met if the parties provide that information in the Joint Pretrial Order.	Local Bankruptcy Court Rule 7026-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
04	E.D. Va.	26(a)(2) in effect for adversary proceedings and contested matters, but timing is controlled by local rule. 26(a)(3) in effect.	Opted out of 26(a)(1).	Opted out of 26(d).	Opted out of 26(f).		Local Bankruptcy Court Rule 7026-1.	
04	W.D. Va.	No explicit rejection of 26(a)(2)-(3).	Opted out of 26(a)(1).	Opted out of 26(d).	No explicit rejection of 26(f).		Local Bankruptcy Court Rule 7026-1.	
04	N.D. W. Va.		Opted out.	Opted out.	Opted out.	Bankruptcy Court follows District Court CJRA plan which incorporates the objectives of amendments in revised local court rules.	Bankruptcy Court follows District Court Order Misc. No. 94-01-E; District Court Order of Feb. 5, 1994	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
04	S.D. W. Va.	No explicit rejection or modification of 26(a)(3) in District Court Local Rules.	District Court LR Civ P 3.01 incorporates 26(a)(1) & (2): Initial disclosure timing requirements are revised to 30 days after 26(f) meeting; local rule also details sequence and timing of disclosures regarding experts.	District Court LR Civ P 2.01(b) incorporates 26(d) requirements, but no explicit deferral provision included.	District Court LR Civ P 2.01(b) incorporates 26(f) requirements.	District Court LR Civ P 3.01, effective Aug. 1, 1994 incorporates control of discovery for district courts. District Court LR Civ P 2.01 (b) requires parties to meet at least 21 days before the scheduling conference to report on all 26(f) matters. At the meeting, parties consider complexity of the case and appropriateness of case-management monitoring, trial by a magistrate judge, and use of ADR.	None	Court is in the process of determining what bankruptcy proceedings and matters will be subject to district court local rules described in columns 1-5 of this chart.

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
05	E.D. La.	26(a)(2) & (3) in effect; timing shall be as directed by the court.	Opted out of 26(a)(1).	Opted out.	Opted out.		Local Bankruptcy Court Rule 7026-1.	
05	M.D. La.	26(a)(2) & (3) in effect; timing shall be as directed by the court.	Opted out of 26(a)(1).	In effect.	In effect.		Local Civil Rule 26.	
05	W.D. La.	26(a)(2) & (3) in effect for adversary proceedings.	Opted out of 26(a)(1) for adversary proceedings and 26(a)(1)-(3) for contested matters, unless ordered by the court or agreed to by stipulation of parties.	Inoperative in contested matters due to non- implementation of 26(f). In effect for adversary proceedings.	Opted out of 26(f), unless ordered by the court or agreed to by stipulation of parties for contested matters. 26(f) in effect for adversary proceedings.		Bankruptcy Court Local Rule 5003-2 & 9013-1. Local District Court Rules 26 & 83.4.	
05	N.D. Miss.		Opted out of 26(a)(1)-(3) subject to further order of the Court or specific order in a particular case or proceeding.	No explicit rejection of 26(d). Inoperative due to non- implementation of 26(f).	Opted out of 26(f) subject to further order of the Court or specific order in a particular case or proceeding.	Also opted out of 26(a)(4).	Bankruptcy Court Internal Operating Order of Jan. 10, 1994	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
05	S.D. Miss.		Opted out of 26(a)(1)-(3) subject to further order of the Court or a specific order of a Bankruptcy Judge in a particular case or proceeding.	No explicit rejection of 26(d). Inoperative due to non-implementation of 26(f).	Opted out of 26(f) subject to further order of the Court or a specific order of a Bankruptcy Judge in a particular case or proceeding.	Also opted out of 26(a)(4).	Bankruptcy Court Internal Operating Order of Jan. 10, 1994	
05	E.D. Tex.		Opted out of 26(a)(1)-(3), unless otherwise ordered by the court.	No explicit rejection of 26(d).	No explicit rejection of 26(f).		Local Bankruptcy Court Rule 7026	
05	N.D. Tex.	No explicit rejection of 26(a)(2)(A) & (B) and 26(a)(3) for adversary proceedings.	Opted out of 26(a) for contested matters. For adversary proceedings opted out of 26(a)(1); and modified 26(a)(2)(C) to require expert witness disclosures be made at least 45 days before trial.	Opted out of 26(d) for contested matters and adversary proceedings.	Opted out of 26(f) for contested matters and adversary proceedings.		Bankruptcy Court Standing Order No. 94-2.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
05	S.D. Tex.	No explicit rejection of 26(a)(1)-(3) for adversary proceedings. No explicit rejection of 26(a)(2)(A) &(C) and 26(a)(3) for contested matters.	Opted out of 26(a)(1) & 26(a)(2)(B) for contested matters, unless otherwise ordered sua sponte or upon motion.	For contested matters, (1) opted out of first sentence of Rule 26(d) (deferral of disclosure until 26(f) conference); second sentence of Rule 26(d) (methods of discovery may be used in any sequence) is in effect. For adversary proceedings, no explicit rejection of 26(d).	Opted out of 26(f) for contested matters. For adversary proceedings, 26(f) in effect with qualification. The discovery plan report required by Rule 26(f) shall be filed with the court no later than the initial scheduling conference.		Bankruptcy Court Standing Order No. 94-8	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
05	W.D. Tex.	26(a)(1)-(3) at or within 10 days after entry of scheduling order.		26(d) basically in effect; local rules says parties can't seek discovery until a scheduling order is entered and such order is entered after 26(f) meeting.	26(f) in effect, unless parties agree to waive.	Bankruptcy Court applies District Court Local Rule regarding the amendments with two noted exceptions: (1) Bankruptcy Local Rule 7016 and related order of Oct. 1993 specifying discovery limitations in adversary proceedings, and (2) Bankruptcy Local Rule 9014 covering response time limits in contested matters.	District Court Local Rules and Bk. Local Rule 7026.	The local rules have not been published yet, but expect them to be incorporated into the revised District Court Local Rules.

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
06	E.D. Ky.	26(a)(1)-(3) in effect for adversary proceedings unless otherwise ordered by the Court.	Opted out of 26(a)(1)-(3) for adversary proceedings and contested matters unless otherwise ordered by the court.	No explicit rejection of 26(d) but rule inoperative due to non-implementation of 26(f).	Opted out of 26(f) for adversary proceedings and contested matters unless otherwise ordered by the court.		Local Bankruptcy Court Rule 7026-1.	
06	W.D. Ky.	26(a)(1)-(3) in effect for adversary proceedings unless otherwise ordered by the Court.	Opted out of Rule 26(a)(1)-(3) for contested matters unless otherwise ordered by the Court.	Opted out of 26(d) for contested matters unless otherwise ordered by the Court. 26(d) in effect for adversary proceedings unless otherwise ordered by the Court.	Opted out of 26(f) for contested matters unless otherwise ordered by the Court.		Bankruptcy Court General Order No. 94-2	
06	E.D. Mich.		Opted out of 26(a)(1)-(3) for adversary proceedings and contested matters, except by order of a judge.	No explicit rejection of 26(d). Inoperative due to non-implementation of 26(f).	Opted out of 26(f) for adversary proceedings and contested matters, except by order of a judge.		Local Bankruptcy Court Rule 7026-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
		No explicit rejection of 26(a)(2) & (3) for contested matters and adversary proceedings.	Opted out of 26(a)(1) for contested matters and adversary proceedings unless made applicable to a specific case by court order.	Opted out of 26(d) for contested matters and adversary proceedings unless made applicable to a specific case by court order.	Opted out of 26(f) for contested matters and adversary proceedings unless made applicable to a specific case by court order.		Local Bankruptcy Court Rule 7026.	
06	N.D. Ohio	In effect.		In effect.	In effect.		Local Bankruptcy Rule 7026-1.	
06	S.D. Ohio	No explicit rejection of 26(a)(2) & (3).	Opted out of 26(a)(1) except as agreed by parties or ordered by a judge in a specific case.	Opted out of 26(d) unless otherwise ordered or agreed by the parties. Discovery may begin at any time.	Local Bankruptcy Court Rule 7026-1 provides that '(p)arties are encouraged, but not obligated except as ordered by a Judge of this Court, to meet and confer and prepare a joint discovery plan as prescribed by Rule 26(f)'. .		Local Bankruptcy Court Rule 7026-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
06	E.D. Tenn.	No explicit rejection of 26(a)(1)-(3) for adversary proceedings.	Opted out of 26(a)(1)-(3) for contested matters and proceedings under Bankruptcy Rule 1018, unless otherwise ordered.	No explicit rejection of rule for adversary proceedings. Rule inoperative due to non-implementation of 26(f) for contested matters and proceedings under Bankruptcy Rule 1018.	Opted out of 26(f) for contested matters and proceedings under Bankruptcy Rule 1018, unless otherwise ordered; no explicit rejection of rule for adversary proceedings.		Local Bankruptcy Court Rule 7026-1	
06	M.D. Tenn.		Opted out of 26(a)(1)-(3) for adversary proceedings and contested matters.	Opted out for adversary proceedings and contested matters.	Opted out for adversary proceedings and contested matters.	Uniform pretrial procedures in the Bankruptcy Court provide for prompt discovery; there is therefore no need to implement FRCP 26(a)(1).	Local Bankruptcy Rule 5.01.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
06	W.D. Tenn.		Opted out of 26(a)(1)-(3), pending further study.	No explicit rejection. Inoperative due to non- implementation of 26(f).	Opted out of 26(f), pending further study.		Bankruptcy Court Misc. No. 93-2	Final decision pending completion of a study by a Local Rules and Forms Revision Committee.
07	C.D. Ill.		Opted out.	No explicit rejection of 26(d); inoperative due to non- implementation of 26(f).	Opted out.		Local District Court Rules 26.2 & 16.2.	
07	N.D. Ill.	No explicit rejection 26(a)(2) & (3) for adversary proceedings and contested matters.	Opted out of 26(a)(1) unless otherwise ordered for adversary proceedings and contested matters.	Opted out of 26(d) unless otherwise ordered for adversary proceedings and contested matters.	Opted out of 26(f) unless otherwise ordered for adversary proceedings and contested matters.		Local Bankruptcy Court Rule 423.	
07	S.D. Ill.		Opted out.	Opted out.	Opted out.		Bankruptcy Court Order No. 1-94	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
07	N.D. Ind.	No explicit rejection of 26(a)(1)-(3) for adversary proceedings.	Opted out of 26(a)(1)-(3) for contested matters, except as otherwise ordered by parties.	No explicit rejection of 26(d) for adversary proceedings. Inoperative due to non-implementation of 26(f) for contested matters.	Opted out of 26(f) for contested matters, except as otherwise ordered by parties. No explicit rejection of 26(f) for adversary proceedings.		General Order No. 94-2.	
07	S.D. Ind.	No explicit rejection of 26(a)(2) & (3).	Opted out 26(a)(1).	Opted out.	Opted out.		District Local Rule 26.3	
07	E.D. Wis.		Opted out.	Opted out.	Opted out.		District Court Order of Jan. 7, 1994.	
07	W.D. Wis.	No explicit rejection of 26(a)(2) & (3).	Opted out of 26(a)(1), unless otherwise ordered by the court.	No explicit rejection. Inoperative due to non-implementation of 26(f).	Opted out of 26(f), unless otherwise ordered by the court.		District Court General Order of Dec. 6, 1993	
08	E.D. Ark.		26(a)(1)-(3) are not in effect unless otherwise ordered or agreed to by parties.	Opted out.	Opted out although parties are encouraged to confer.	Also opted out of 26(a)(4).	Local Bankruptcy Court Rule 7026-1	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
08	W.D. Ark.		26(a)(1)-(3) are not in effect unless otherwise ordered or agreed to by parties.	Opted out.	Opted out although parties are encouraged to confer..	Also opted out of 26(a)(4).	Local Bankruptcy Court Rule 7026-1	
08	N.D. Iowa	For adversary proceedings, Rules 26(a)(1)-(3) are in effect for cases where scheduling conferences are held. Timing of all Rule 26 disclosures determined by separate orders in each case. For contested matters 26(a)(2)(A) & 26(a)(3) in effect with timing controlled by local rule.	26(a)(1) & 26(a)(2)(B) not in effect for contested matters.	Timing of all Rule 26 disclosures determined by separate orders in each case. Except as limited by FRCP 30(a), the parties may engage in discovery before the scheduling conference.	Opted out of 26(f) for contested matters. 26(f) in effect for adversary proceedings where scheduling conferences are held.	In contested matter proceedings, disclosure of identity of experts (Rule 26(a)(2)(A)) and pretrial disclosures (Rule 26(a)(3)) are made at the time of the exchange of exhibits as provided in Local Rule 9070 1(d).	Local Bankruptcy Court Rule 7026-1 & 9014-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
08	S.D. Iowa	26(a)(2)(A) and 26(a)(3) in effect unless otherwise ordered in individual cases.	Opted out of 26(a)(1), 26(a)(2)(B) & (C) unless otherwise ordered in individual cases.	Opted out of 26(d).	26(f) in effect.	Court is amending local bankruptcy rules and does not adopt recent amendments to District Court rules dealing with discovery.	Bankruptcy Court Order of July 1, 1994; District Court Order-Misc. No. M1-33; District Court Order-Misc. No. M1-33(A)	Court will continue to apply current local bankruptcy rules until the local bankruptcy rules are amended.
08	D. Minn.		Opted out of 26(a)(1)-(3) for adversary proceedings and contested matters.	No explicit rejection of 26(d). Inoperative due to non- implementation of 26(f).	Opted out of 26(f) for adversary proceedings and contested matters.	Local Rule 7037-1.	Local Bankruptcy Court Rule 7026-1	
08	E.D. Mo.	No explicit rejection of 26(a)(2) & (3).	Opted out of 26(a)(1) for adversary proceedings and contested matters, except to the extent stipulated to by the parties or as otherwise ordered by a judge.	No explicit rejection of 26(d).	No explicit rejection of 26(f).	Bankruptcy Court follows the District Court's CJRA plan, which opts out of 26(a)(1) thereby retaining the ability to decide the appropriate amount of disclosure and discovery on a case-by-case basis.	Bankruptcy Court Administrative Order of Dec. 7, 1993	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
08	W.D. Mo.	No explicit rejection of 26(a)(1)-(3) for contested matters.	Opted out of 26(a)(1)-(3) for adversary proceedings, unless otherwise ordered in a particular action.	Opted out.	Opted out 26(f) for adversary proceedings, unless otherwise ordered in a particular action. No explicit rejection of 26(f) for contested matters.		Bankruptcy Local Rule 7026-1.	
08	D. N.D.	No explicit rejection of 26(a)(2)(A) & (B); further, no explicit rejection of provisions of 26(a)(2)(C) & 26(a)(3) dealing with matters other than timing.	Opted out of 26(a)(1) for adversary proceedings and contested matters and the timing requirements under 26(a)(2)(C) and 26(a)(3).	Opted out of 26(d).	Opted out of 26(f).		Local Bankruptcy Court Rule 7026-1	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
08	D. Neb.	26(a)(1)-(3) in effect for adversary matters commenced after March 1, 1994, unless otherwise ordered by the court.	Opted out of 26(a)(1)-(3) for contested matters, unless otherwise ordered by the court.	Opted out of 26(d) for contested matters and adversary proceedings, unless otherwise ordered by the court.	Opted out of 26(f) for contested matters and adversary proceedings, unless otherwise ordered by the court.	General Order 94-1 specifies that the disclosure required by 26(a)(1) shall be made within 45 days after the answer is filed.	Bankruptcy Court General Order No. 94-1	Clerk reports no local rules, general orders, or standing orders as of Mar. 29, 2000.
08	D. S.D.	Presumably all in effect.		Presumably in effect.	Presumably in effect.		none	

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Circuit	District	Provisions of FRCP 26(a)(1)-(3) that are in effect	Provisions of FRCP 26(a)(1)-(3) that are not in effect	FRCP 26(d) (Timing and Sequence of Discovery)	FRCP 26(f) (Meeting of Parties)	Other related requirements in effect	Bankruptcy or District Court Order or Local Rule, if any	Court has not yet made decision or has made only a provisional decision
09	D. Alaska	26(a)(1)-(3) in effect for adversary proceedings. 26(a)(1) & (2) in effect for contested matters involving motions for: relief of stay; sale of estate property; and to assume, reject or assign executory contracts or unexpired leases. 26(a)(3) applicable in trials and hearings pursuant to Local Bankruptcy Rule 9075-1(e).		26(d) in effect for adversary proceedings. Implementation of 26(d) on case-by-case basis for contested matters.	26(f) in effect for adversary proceedings. Implementation of 26(f) on case-by-case basis for contested matters.		Local Bankruptcy Rule 7026-1 and 9075-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
09	D. Ariz.	26(a)(1)-(3) in effect for adversary proceedings. No explicit rejection of 26(a)(2) & (3) for contested matters.	Opted out of 26(a)(1) for contested matters.	26(d) in effect for adversary proceedings. 26(d) not in effect for contested matters.	26(f) in effect for adversary proceedings. 26(f) not in effect for contested matters.	Also opted out of 26(a), 26(d), 26(f) for contested involuntary petitions.	Bankruptcy Court General Order No. 59.	
09	C.D. Cal.	26(a)(2)(C) is in effect. No explicit rejection of 26(a)(2)(A) & (B).	Opted out of 26(a)(1) & (3).	Opted out.	Opted out.		Bankruptcy Court General Order No. 94-05; District Court General Order 339-C	
09	E.D. Cal.	No explicit rejection of 26(a)(2)(A) & (C).	Opted out of 26(a)(1), 26(a)(2)(B) and 26(a)(3) unless otherwise ordered by the court in the specific adversary proceeding or contested matter.	Opted out of 26(d) unless otherwise ordered by the court in the specific adversary proceeding or contested matter.	Opted out of 26(f) unless otherwise ordered by the court in the specific adversary proceeding or contested matter.	Expert witness disclosure requirements performed in accordance with court order or FRCP 30, 33, & 34. Pre-trial disclosures pursuant to LBR 9017 or court order.	Local Bankruptcy Court Rule 7026-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
09	N.D. Cal.		Opted out of 26(a)(1)-(3) in adversary proceedings and contested matters, unless otherwise ordered.	Opted out of 26(d) in adversary proceedings and contested matters, unless otherwise ordered.	Opted out of 26(f) in adversary proceedings and contested matters, unless otherwise ordered.		Local Bankruptcy Court Rule 7016-1.	
09	S.D. Cal.		Opted out of 26(a)(1)-(3), unless otherwise ordered.	Opted out of 26(d), unless otherwise ordered.	Opted out of 26(f), unless otherwise ordered.		Local Bankruptcy Court Rule 7026-1.	
09	D. Guam	In effect.		No explicit rejection of 26(d).	In effect for adversary proceedings.	Local Rule 16.7	Local Rule 16.1 & 16.2.	
09	D. Haw.	26(a)(2) & (3) in effect, unless otherwise ordered.	Opted out of 26(a)(1) unless otherwise ordered.	26(d) in effect.	26(f) in effect, unless otherwise ordered.	Deadlines for 26(a)(3) disclosures shall be established at scheduling conference/final pretrial conference.	Local Bankruptcy Court Rule 7001-1.	

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Circuit	Provisions of FRCP 26(a)(1)-(3) that are in effect	Provisions of FRCP 26(a)(1)-(3) that are not in effect	FRCP 26(d) (Timing and Sequence of Discovery)	FRCP 26(f) (Meeting of Parties)	Other related requirements in effect	Bankruptcy or District Court Order or Local Rule, if any	Court has not yet made decision or has made only a provisional decision
District							

09	D. Idaho		Opted out of 26(a)(1)-(3) unless specifically ordered by Court. Local District Court Rule 26.2 regarding disclosure not applicable in contested matters or adversary proceedings unless specifically ordered by the Court.	No explicit rejection of 26(d). Inoperative due to non-implementation of 26(f). Local District Court Rule 26.2 regarding disclosure not applicable in contested matters or adversary proceedings unless specifically ordered by the Court.	Opted out of 26(f) unless specifically ordered by Court. Local District Court Rule 26.2 disclosure not applicable in contested matters or adversary proceedings unless specifically ordered by the Court.		Bankruptcy Court General Order No. 101	
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Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
09	D. N. Mar. I.	26(a)(1)-(3) are in effect.		In effect.	In effect.	All amendments to Rule 26 are adopted in District Court's Local Rules and CJRA plan. Plan requires initial, expert, and pretrial disclosure similar to that required by amendments to the federal rule.	none	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
09	D. Mont.		Opted out of 26(a)(1) - (3) for contested matters and adversary proceedings.	Opted out of 26(d) for contested matters and adversary proceedings.	Opted out of 26(f) for contested matters and adversary proceedings.	Goals of Rule 26 amendments met by local rules. District Court CJRA plan permits pre-discovery disclosure under LBR 2(b) for adversary proceedings upon application of a party. The Court may order a pretrial conference under LBR 2(c) for complex cases.	Local Bankruptcy Court Rule 7001-1.	
09	D. Nev.	26(a)(2)(A) & (3) are in effect, unless otherwise ordered. Timing controlled by local rule.	Opted out of 26(a)(1) and 26(a)(2)(B), unless otherwise ordered.	Opted out of 26(d) as to limitations on commencement of discovery but adopted the other tenets.	Opted out of 26(f) for contested matters and other actions ordered by the court. No rejection of 26(f) for adversary proceedings.	Discovery conducted in accordance with FRCP and local rules in effect.	Local Bankruptcy Rule 7026, 7030, 7031, 7032, & 7036.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
09	D. Or.	Application of 26(a)(1)-(3) for adversary proceedings determined by court at the initial pretrial conference. 26(a)(2)(A) and (a)(2)(B) in effect for contested matters, but timing is controlled by local rule.	Opted out of 26(a)(1) and 26(a)(3) for contested matters.	Presumptive stay provided by 26(d) not applicable for contested matters; discovery may begin at any time. For adversary proceedings, no discovery before the pretrial conference; discovery may begin at time of determination by court that 26(f) doesn't apply. If court determines that 26(f) does apply, discovery begins after the parties have met and conferred.	Opted out of 26(f) for contested matters. For adversary proceedings, court determines applicability of 26(f) at the pretrial conference.		Bankruptcy Court Local Rule 7026-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
09	E.D. Wash.	26(a)(1)-(3) in effect for adversary proceedings filed on or after Nov. 1, 1994; in effect for any adversary proceedings filed before Nov. 1, 1994 and to any other contested matter if specifically ordered by the judge.		26(d) in effect for adversary proceedings filed on or after Nov. 1, 1994; in effect for any adversary proceedings filed before Nov. 1, 1994 and to any other contested matter if specifically ordered by the judge.	26(f) in effect for adversary proceedings filed on or after Nov. 1, 1994; in effect for any adversary proceedings filed before Nov. 1, 1994 and to any other contested matter if specifically ordered by the judge.		District Court General Order of Dec. 11, 1993; Bankruptcy Court General Order No. 2 of Feb. 10, 1994 (effective date of Rules 26(a)(1)-(3), 26(d), and 26(f) delayed to allow court to further consider effect of amended rules); Bankruptcy Court Order dated Oct. 31, 1994	
09	W.D. Wash.	26(a)(2) & (3) are in effect, although the timing and content of disclosure modified by local rule. No explicit rejection of 26(a)(1).		No explicit rejection of discovery deferment of 26(d). Provision regarding sequence of discovery is in effect.	No explicit rejection of 26(f).		Bankruptcy Court Local Rule 7026-1	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
10	D. Colo.	No rejection of 26(a)(1)-(3) for adversary proceedings.	Opted out of 26(a)(1)-(3) for contested matters, except as otherwise ordered.	No rejection of provision for adversary proceedings. Inoperative due to non-implementation of 26(f) for contested matters.	Opted out of 26(f) for contested matters, except as otherwise ordered. No rejection of provision for adversary proceedings.		Local Bankruptcy Court Rule 914 and Bankruptcy Court General Procedural Order No. 1994-2.	
10	D. Kan.	No explicit rejection of 26(a)(1)-(3) for adversary proceedings.	Opted out of 26(a)(1)-(3) for contested matters, except as specifically ordered by the judge presiding over a particular matter.	Inoperative for contested matters due to non-implementation of 26(f). No explicit rejection of rule for adversary proceedings.	Opted out of 26(f) for contested matters, except as specifically ordered by the judge presiding over a particular matter.		Bankruptcy Court Local Rule 7026-1	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Trimming and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
10	D. N.M.	26(a)(2) & (3) timing requirements established by court order in each adversary proceeding.	Opted out of 26(a)(1) for contested matters and adversary proceedings unless otherwise ordered by the judge in a particular case. Opted out of 26(a)(2) & (3) for contested matters.	Opted out of discovery deferment in 26(d) for contested and adversary matters unless ordered by a judge. No rejection of provision regarding sequence of discovery.	Opted out of 26(f) for contested and adversary matters unless otherwise ordered by presiding judge.		Bankruptcy Court Local Rule 7026-1.	
10	E.D. Okla.	No explicit rejection of 26(a)(2) & (3).	Opted out of 26(a)(1).	No explicit rejection of 26(d). Inoperative due to non- implementation of 26(f).	Opted out of 26(f).		Bankruptcy Court Local Rule 7026-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
10	N.D. Okla.		Opted out of 26(a)(1)-(3) for adversary proceedings and contested matters.	Opted out of discovery deferment in 26(d) for contested matters and adversary proceedings, unless otherwise ordered by a judge. No explicit rejection of provision regarding sequence of discovery. Inoperative due to non-implementation of 26(f).	Opted out for contested matters and adversary proceedings.		Bankruptcy Court Local Rule 7026.	

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Circuit	Provisions of FRCP 26(a)(1)-(3) that are in effect	Provisions of FRCP 26(a)(1)-(3) that are not in effect	FRCP 26(d) (Timing and Sequence of Discovery)	FRCP 26(f) (Meeting of Parties)	Other related requirements in effect	Bankruptcy or District Court Order or Local Rule, if any	Court has not yet made decision or has made only a provisional decision
District							

10	W.D. Okla.	No explicit rejection of 26(a)(2) & (3).	Follow Local Rule 7016(b) in lieu of 26(a)(1).	Opted out.	Follow Local Rule 7016(b) in lieu of 26(f).	Local Rule 7016 authorizes court to manage discovery matters in scheduling order. Local Rule 7016 requires meeting of parties prior to scheduling conference.	Local Bankruptcy Rule 7026 & 7016.	
10	D. Utah	26(a)(1)-(3) in effect for adversary proceedings filed with the court on/after April 4, 1994.	Opted out of 26(a)(1)-(3) for contested matters unless requested by a party or ordered by the court on a case-by-case basis.	Opted out of 26(d) for contested matters unless requested by a party or ordered by the court on a case-by-case basis. 26(d) in effect for adversary proceedings.	Opted out of 26(f) for contested matters unless requested by a party or ordered by the court on a case-by-case basis. 26(f) in effect for adversary proceedings.		Bankruptcy Court Local Rule 7026-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
10	D. Wyo.	26(a)(1)-(3) in effect for adversary proceedings.	Opted out of 26(a)(1)-(3) for contested matters, unless otherwise ordered by the court.	Opted out of 26(d) for contested matters and adversary proceedings.	Opted out of 26(f) for contested matters. Opted out of 26(f) for adversary proceedings unless the parties, at their discretion, file the report prior to the initial scheduling conference to facilitate scheduling.		Bankruptcy Court Local Rule 7026-1.	
11	M.D. Ala.	Pursuant to Bankruptcy Rule 7026 judge enter orders in each adversary proceeding directing applicability of Rule 26 discovery provisions for that particular case.		Pursuant to Bankruptcy Rule 7026 judge enter orders in each adversary proceeding directing applicability of Rule 26 discovery provisions for that particular case.	Pursuant to Bankruptcy Rule 7026 judge enter orders in each adversary proceeding directing applicability of Rule 26 discovery provisions for that particular case.			

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
			Opted out of 26(a)(1)-(3) for adversary proceedings and contested matters, unless otherwise ordered or stipulated.	Inoperative due to non-implementation of 26(f).	Opted out of 26(f) for adversary proceedings and contested orders, unless otherwise ordered or stipulated.		Bankruptcy Court Local Rule 7026-1.	
11	S.D. Ala.	No explicit rejection of 26(a)(2) & (3).	Opted out of 26(a)(1) for cases filed under Part VII, FRBP, unless the court orders otherwise upon its own motion or on a motion filed by a party.	No explicit rejection of 26(d).	No explicit rejection of 26(f).		Bankruptcy Court Local Rule 7026-1.	
11	M.D. Fla.		26(a)(1)-(3) not mandatory for adversary proceedings and contested matters unless stipulated by parties or otherwise ordered by the court.	Inoperative unless 26(f) meeting is ordered.	26(f) not mandatory for adversary proceedings and contested matters unless stipulated by parties or otherwise ordered by the court.		Local Bankruptcy Rule 7026.1.	
11	N.D. Fla.	No explicit rejection of 26(a)(1)-(3).		No explicit rejection of 26(d).	No explicit rejection of 26(f).		Bankruptcy Court Local Rule 7026-1.	

Circuit	District	1 Provisions of FRCP 26(a)(1)-(3) that are in effect	2 Provisions of FRCP 26(a)(1)-(3) that are not in effect	3 FRCP 26(d) (Timing and Sequence of Discovery)	4 FRCP 26(f) (Meeting of Parties)	5 Other related requirements in effect	6 Bankruptcy or District Court Order or Local Rule, if any	7 Court has not yet made decision or has made only a provisional decision
11	S.D. Fla.	26(a)(1)-(3) applicable only to the extent set forth in the pretrial order.		26(d) applicable only to the extent set forth in the pretrial order.	26(f) applicable only to the extent set forth in the pretrial order.		Bankruptcy Court Local Rule 7026-1.	
11	M.D. Ga.		26(a)(1)-(3) in effect to the extent that the court enforces a party's motion.	26(d) in effect to the extent that the court enforces a party's motion.	26(f) in effect only to the extent that the court enforces a party's motion.		none	Bankruptcy Court will study the matter further.
11	N.D. Ga.	No explicit rejection of 26(a)(2) & (3) for adversary proceedings or contested matters.	Opted out of 26(a)(1) except as may be agreed by the parties or as ordered by the judge in a specific adversary proceeding or contested matter.	Opted out of 26(d) except as may be agreed by the parties or as ordered by the judge in a specific adversary proceeding or contested matter.	Opted out of 26(f) except as ordered by the judge. 26(f) conference encouraged but not obligatory.		Bankruptcy Court Local Rule 7026-1; Bankruptcy Court General Order of 5/13/94.	
11	S.D. Ga.	No explicit rejection of 26(a)(2) & (3).	Opted out of 26(a)(1).	No explicit rejection of 26(d). Inoperative due to the non-implementation of 26(f).	Opted out.		Local District Rule 26.1	



TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: APPLICATION OF BANKRUPTCY RULES 9019 AND 7041 TO MATTERS
PENDING IN THE COURTS OF APPEALS
DATE: FEBRUARY 27, 2001

The Advisory Committee on Appellate Rules, has asked whether the Advisory Committee on Bankruptcy Rules would recommend that amendment(s) be proposed to set out the proper treatment of Rule 9019 which governs generally the compromise and settlement of matters in bankruptcy cases, and Rule 7041 governing the settlement of adversary proceedings involving objections to discharge. Both of these rules recognize that the settlement or compromise of matters and the dismissal of discharge cases can have a profound impact on entities that are not parties to the proceeding and would not be parties to any appeal. FRAP 33, on the other hand, authorizes the entry of any necessary order to dispose of an appeal. Local appellate rules may take this authority even further by extending the power to enter necessary orders even to mediators. (*See, e.g.*, 4th Cir. Local Rule 33.) Copies of these two rules are attached.

The Advisory Committee on Bankruptcy Rules has previously considered this issue for the purpose of offering its views to the Advisory Committee on Appellate Rules. After deliberation, the Advisory Committee on Bankruptcy Rules concluded that it is both appropriate and desirable to incorporate a reference to Bankruptcy Rules 9019 and 7014 into Rule 6 of the Federal Rules of Appellate Procedure. Including such a reference would inform counsel to these appeals that they still must comply with Bankruptcy Rules 9019 and 7014, as appropriate.

Bankruptcy Rule 9019(a) provides the procedure for court approval of settlements. As settlements of disputes may affect the estate and parties in interest who are not parties to the particular dispute being settled, the rule requires notice to all creditors, the United States trustee, and others. For example, if a mortgagee and the trustee are disputing the allowed amount of a secured claim, and they reach a settlement, the court would have to approve the settlement on notice to all creditors. Rule 9019(a) provides:

Rule 9019. Compromise and Arbitration

(a) *Compromise.* On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Bankruptcy Rule 2002(a)(3) provides for 20-day notice to all creditors of “the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent.” These notices are also sent to official committees and the United States trustee. See Rule 2002(i) and (k).

In addition to the requirement of notice and court approval of settlements, the Bankruptcy Rules also require court approval, on notice to the trustee, the United States trustee, and any other person the court may direct, of the dismissal of a complaint objecting to the debtor’s discharge. The reason for this requirement is that dismissal of a complaint objecting to the debtor’s discharge raises concerns because the plaintiff may have been induced to dismiss by an advantage given or promised by the debtor or someone else, which could be inconsistent with policies underlying the Bankruptcy Code (such as equality of treatment of creditors and fresh

start for the debtor).

Similarly, Bankruptcy Rule 7041 requires that when a complaint objecting to a debtor's discharge is dismissed at the plaintiff's instance, notice must be give to the trustee, the United States trustee, and other parties as the court directs. There are several reasons for requiring this notice. First, it offers an opportunity for other parties in interest to take over the litigation and pursue the discharge objection. These parties may have withheld their efforts to challenge the discharge because another party initiated the action. Thus, permitting them to challenge the dismissal and seek to be substituted protects their right to proceed under § 727 of the Code. Second, and perhaps more importantly, notifying other interested parties of the proposed dismissal reduces the possibility that the debtor can "buy a discharge" by making a payment or other concession to the objecting creditor in return for the dismissal of the adversary proceeding.

The policies underlying Bankruptcy Rules 7041 and 9019 apply with equal force when the matter is pending in the court of appeals. Recognizing and implementing those policies is not inconsistent with the purposes of FRAP 33 or similar local rules. Therefore, an amendment to the Appellate Rules is in order. That amendment can be included either in FRAP 6 or FRAP 33. FRAP 6 sets out the rules that apply to appeals from a district court or a bankruptcy appellate panel. Subdivision (b)(2) lists additional rules that apply in appeals of bankruptcy matters. That rule could be amended as follows to address the issue of settlements and plaintiff initiated dismissals of discharge objections.

Rule 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel

1 (b)(2) ADDITIONAL RULES. In addition to the rules made
2 applicable by Rule 6(b)(1), the following rules apply:

3 *****

4 (E) SETTLEMENT OR DISMISSAL OF APPEALS.

5 Bankruptcy Rules 9019 and 7041 apply to any settlements
6 of appeals and dismissals of complaints objecting to a
7 discharge at the instance of the plaintiff.

COMMITTEE NOTE

Settlements in bankruptcy cases generally, and particularly when the underlying action is an objection to a debtor's discharge, can have a profound impact on the interests of persons who are not parties to a specific action. Bankruptcy Rules 7041 and 9019 govern these matters when the actions are pending in the bankruptcy courts and require that parties in interest be notified of proposed dismissals and settlements. This provides those parties an opportunity to be heard in the matter prior to their rights being affected. The same protections are appropriate to provide when the matter is pending in the court of appeals. Thus, the rule is amended to provide that these Bankruptcy Rules are applicable to cases pending in the court of appeals.

Instead of amending FRAP 6, the language set out above could be inserted into FRAP 33 which governs Appeal Conferences. The foregoing language could simply be added to the end of FRAP 33. Placing the reference in Rule 33 rather than Rule 6 has the advantage of putting it in the rule that addresses settlements. The Appellate Rules Committee is inclined to follow whatever suggestion we make on the issue. Once we decide the form and location of the amendment, we can forward the proposal to the Appellate Rules Committee which, of course, can accept or reject our suggestion.

(2) **Other Papers.** Any other paper, including a petition for rehearing and a petition for rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) a cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2); and

(B) Rule 32(a)(7) does not apply.

(d) **Local Variation.** Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 33. Appeal Conferences

The court may direct the attorneys—and, when appropriate, the parties—to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

(As amended Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 34. Oral Argument

(a) In General.

(1) **Party's Statement.** Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) **Standards.** Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) **Notice of Argument; Postponement.** The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) **Order and Contents of Argument.** The appellant opens and includes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) **Cross-Appeals and Separate Appeals.** If there is a cross-appeal, Rule 28(h) determines which party is the appellant and which



LOCAL RULE 33. CIRCUIT MEDIATION CONFERENCES

All civil and agency cases in which all parties are represented by counsel on appeal will be reviewed by a circuit mediator after the filing of the docketing statements required by Local Rule 3(b). The circuit mediator will determine whether a mediation conference may assist either the Court or the parties. Counsel for a party may also request a conference if counsel believes it will be of assistance to the Court or the parties. Counsel's participation is required at any scheduled conference. Mediation conferences will generally be conducted by telephone but may be conducted in person in the discretion of a circuit mediator. Mediation conferences may be adjourned from time to time by a circuit mediator. Purposes of the mediation conference include:

- (a) Jurisdictional review;
- (b) Simplification, clarification, and reduction of issues;
- (c) Discussion of settlement; and
- (d) Consideration of any other matter relating to the efficient management and disposition of the appeal.

Although the time allowed for filing of briefs is not automatically tolled by proceedings under this local rule, if the parties wish to pursue, or are engaged in, settlement discussions, counsel for any party may move to extend the briefing schedule. The mediator, through the Clerk of the Court, may enter orders which control the course of proceedings and, upon agreement of the parties, dispose of the case.

Statements and comments made during all mediation conferences, and papers or electronic information generated during the process, are not included in Court files except to the extent disclosed by orders entered under this local rule. Information disclosed in the mediation process shall be kept confidential and shall not be disclosed by a circuit mediator, counsel, or parties to the judges deciding the appeal or to any other person outside the mediation program participants.

Adopted effective June 8, 1994; amended effective December 1, 1995; March 4, 1998.

FRAP 34. ORAL ARGUMENT

(a) In General.

(1) *Party's Statement.* Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) *Standards.* Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees

MEMORANDUM TO: THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

SUBJECT: Notice of Fee Waiver for Child Support Creditors and Their Representatives

The Bankruptcy Reform Act of 1994 contained a provision permitting appearance without an attorney and “without charge” by a child support creditor or a child support creditor’s representative. Pub. L. No. 103-394, § 304(g), 108 Stat. 4106 (Oct. 22, 1994). To be eligible for the fee waiver, the child support creditor or representative was required to file a form stating details of the child support debt, its status, “other characteristics.” *Id.* The Director of the Administrative Office issued a form for the purpose, Form B281 “Appearance of Child Support Creditor or Representative,” in December 1994.

At the time § 304(g) was enacted, the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee) anticipated a large number of filings by child support creditors or their representatives, particularly involuntary petitions against noncustodial parents who owed substantial arrearages. The Bankruptcy Committee requested the Committee on Court Administration and Case Management (CACM), which has jurisdiction over court fees, to seek legislation to both codify and clarify this fee waiver provision. Although supported by CACM, the request for statutory action was not included in the judiciary’s annual “court improvements” bill in 1995. Over the next year, it became apparent that the anticipated flood of filings would not occur, and the continued omission of the statutory amendment from subsequent court improvements bills did not attract the Bankruptcy Committee’s attention. After nearly a decade, a court improvements bill was enacted in late 2000, and that event triggered a review of the files related to each year’s proposed legislation. This file review uncovered the overlooked request for action concerning the child support creditor’s fee waiver.

In light of the experience gained since 1994, the Bankruptcy Committee now believes a statutory amendment is unnecessary and suggests, instead, that a notice of the availability of the fee waiver be included on the official forms for an involuntary petition (Official Form 5) and a notice of appeal (Official Form 17). Attached are proposed amendments to implement this request for the Advisory Committee’s consideration. Also attached are copies of § 304(g) of the Bankruptcy Reform Act of 1994 and Form B281 “Appearance of Child Support Creditor or Representative.”

Patricia S. Ketchum

03/01/01

Attachments

COMMITTEE NOTE

The form is amended to give notice that no filing fee is required if a child support creditor or its representative is a petitioner, and if the petitioner also files a form detailing the child support debt, its status, and other characteristics, as specified in § 304(g) of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 (Oct. 22, 1994).

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____

Chapter _____

[Caption as in Form 16A, 16B, 16C, or 16D, as appropriate]

NOTICE OF APPEAL

_____, the plaintiff [*or defendant or other party*] appeals under 28 U.S.C. § 158(a) or (b) from the judgment, order, or decree of the bankruptcy judge (describe) entered in this adversary proceeding [*or other proceeding, describe type*] on the _____ day of _____, _____.
(month) (year)

The names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Dated: _____

Signed: _____
Attorney for Appellant (or Appellant, if not represented by
an Attorney)

Attorney Name: _____

Address: _____

Telephone No: _____

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement of election at the time of the filing of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the district court.

If a child support creditor or its representative is the appellant, and if the child support creditor or its representative files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

COMMITTEE NOTE

The form is amended to give notice that no filing fee is required if a child support creditor or its representative is the appellant, and if the child support creditor or its representative files a form detailing the child support debt, its status, and other characteristics, as specified in § 304(g) of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-396, 108 Stat. 4106 (Oct. 22, 1994).

“(A) is assigned to another entity, voluntarily, by operation of law, or otherwise, or

“(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support; or”.

(g) APPEARANCE BEFORE COURT.—Child support creditors or their representatives shall be permitted to appear and intervene without charge, and without meeting any special local court rule requirement for attorney appearances, in any bankruptcy case or proceeding in any bankruptcy court or district court of the United States if such creditors or representatives file a form in such court that contains information detailing the child support debt, its status, and other characteristics.

(h) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) in section 502(i) by striking “507(a)(7)” and inserting “507(a)(8)”,

(2) in section 503(b)(1)(B)(i) by striking “507(a)(7)” and inserting “507(a)(8)”,

(3) in section 523(a)(1)(A) by striking “507(a)(7)” and inserting “507(a)(8)”,

(4) in section 724(b)(2) by striking “or 507(a)(6)” and inserting “507(a)(6), or 507(a)(7)”,

(5) in section 726(b) by striking “or (7)” and inserting “, (7), or (8)”,

(6) in section 1123(a)(1) by striking “507(a)(7)” and inserting “507(a)(8)”,

(7) in section 1129(a)(9)—

(i) in subparagraph (B) by striking “or 507(a)(6)” and inserting “, 507(a)(6), or 507(a)(7)”, and

(ii) in subparagraph (C) by striking “507(a)(7)” and inserting “507(a)(8)”.

SEC. 305. INTEREST ON INTEREST.

(a) CHAPTER 11.—Section 1123 of title 11, United States Code, is amended by adding at the end the following:

“(d) Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.”.

(b) CHAPTER 12.—Section 1222 of title 11, United States Code, is amended by adding at the end the following:

“(d) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1225(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.”.

(c) CHAPTER 13.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

“(e) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.”.

Pub. L. No. 103-394,
§ 304(g), 108 Stat.
4106 (Oct. 22, 1994)

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and any other financial activity. The document also highlights the need for regular reconciliation of accounts to identify any discrepancies early on.

Next, the document addresses the issue of budgeting. It suggests that a well-defined budget is essential for controlling costs and maximizing efficiency. By setting clear financial goals and monitoring progress against them, organizations can avoid overspending and ensure that resources are allocated effectively. The document provides several tips for creating a realistic budget, such as basing it on historical data and including a contingency fund for unexpected expenses.

The third section focuses on the importance of transparency and communication in financial management. It argues that stakeholders, including investors, creditors, and employees, need to have access to accurate and timely financial information. This helps build trust and confidence in the organization's financial health. The document also discusses the benefits of regular financial reporting and the importance of clear communication channels for discussing financial matters.

Finally, the document concludes by emphasizing the role of technology in modern financial management. It notes that many organizations are now turning to software solutions to streamline their accounting processes, reduce errors, and improve data security. While technology can be a powerful tool, it is also important to ensure that any system implemented is secure and reliable. The document provides some guidance on how to evaluate and choose the right financial management software for an organization's needs.

UNITED STATES BANKRUPTCY COURT
OF

In re

Debtor

Address:

Social Security No(s):

Employer's Tax Identification No(s). [if any]:

Bankruptcy Case No.

Chapter _____

APPEARANCE OF CHILD SUPPORT CREDITOR*
OR REPRESENTATIVE

I certify under penalty of perjury that I am a child support creditor* of the above-named debtor, or the authorized representative of such child support creditor, with respect to the child support obligation which is set out below.

Name:

Organization:

Address:

Telephone Number:

_____ Date

X _____
Child Support Creditor* or Authorized Representative

<u>Summary of Child Support Obligation</u>	
Amount in arrears:	If Child Support has been assigned:
\$ _____	Amount of Support which is owed under assignments:
Amount currently due per week or per month on a continuing basis:	\$ _____
\$ _____ (per week) (per month)	Amount owed primary child support creditor (balance not assigned):
	\$ _____
Attach an itemized statement of account	

* Child support creditor includes both creditor to whom the debtor has a primary obligation to pay child support as well as any entity to whom such support has been assigned, if pursuant to Section 402(a)(26) of the Social Security Act or if such debt has been assigned to the Federal Government or to any State or political subdivision of a State.



MEMORANDUM TO: THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

SUBJECT: Activities of the Privacy Subcommittee of the Committee on Court Administration and Case Management (CACM)

The CACM Privacy Subcommittee received 240 comments in response to its request concerning various policy proposals relating to public access to court records. The proposals on which the subcommittee requested comment covered general policies and each of the case types for which the courts maintain case records: appellate, bankruptcy, civil, and criminal. The commentators addressed all of these, including bankruptcy court records, and expressed a range of views. Several commentators who suggested alternatives to the published proposals suggested that requiring viewers of court information to log in and obtain a password and charging a fee for view records by electronically from a remote location would help achieve the balance between the public's right to access and the individual's right to privacy. Use of a log-in and password and the imposition of fees for access already are being implemented by the judiciary for other reasons. The comments are available at "www.privacy.uscourts.gov."

The CACM Privacy Subcommittee has a bankruptcy judge member, Judge Rich Leonard of the Eastern District of North Carolina, and the Automation and Technology, Bankruptcy Administration, Criminal Law, and Standing Rules Committees all have designated liaisons to the subcommittee. Gene Lafitte, Esq., is the liaison from the Standing Committee; he is being assisted by Professor Dan Capra, Reporter to the Advisory Committee on Evidence Rules. The liaison from the Bankruptcy Administration Committee is District Judge Sarah Vance. Bankruptcy Judge Dennis Montali, who will be attending the Committee meeting on behalf of the Bankruptcy Administration Committee, is the alternate liaison to the Privacy Subcommittee.

The Privacy Subcommittee plans to hold a public hearing in Washington, DC, on Friday, March 16, to solicit additional views on its policy proposals. Speakers will include a media representative, a private investigators' representative, a data resellers' representative, representatives from the Social Security Administration and the U.S. Department of Justice, practicing attorneys, private citizens (one in favor and one opposed to unrestricted access), a library and research representative, privacy advocacy group representatives, open access advocacy group representatives, a criminal defense representative, a criminal justice (victims' rights and public oversight of courts) representative, and financial services and consumer bankruptcy lawyers' representatives.

The Privacy Subcommittee also plans to meet to review the written comments and begin to formulate recommendations for review by all concerned Judicial Conference committees at their June 2001 meetings. The Subcommittee plans to have final recommendations ready for consideration by the Judicial Conference at its September 2001 session.

Patricia S. Ketchum

03/02/01

MEMORANDUM TO: THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

SUBJECT: Status Report on Electronic Filing/Model Local Rules on Electronic Filing

The judiciary's electronic case files initiative (CM/ECF) is moving into the implementation stage. An enhanced bankruptcy court system has been completed and is being installed and initial group of courts. A district court system is scheduled for completion in the summer of 2001, with installation in the first new courts in the fall of 2001. An appellate system is in the early stages of programming. A present, plans call for installation of the systems in all federal courts over the next four years. Although each system has full electronic filing and document storage/retrieval capabilities, courts have the option of using the new system simply as a replacement for their existing docketing and case management systems.

Bankruptcy courts already using CM/ECF are the Southern District of New York, the Eastern District of Virginia, the Northern District of Georgia, the District of Arizona, the Southern District of California, the Western District of Texas, the Western District of North Carolina, the Middle District of Louisiana and the Western District of Missouri. Fourteen more bankruptcy courts expect to be using the system before the end of the calendar year.

Meanwhile, the Committee on Court Administration and Case Management (CACM) has formed a subcommittee to work on developing model local rules governing electronic filing. Circuit Judge Anthony J. Scirica, chairman of the Standing Committee, consented to CACM's undertaking this project, in large part because of the perceived impact of electronic filing on court operations. The subcommittee will hold its first formal meeting in Washington, DC, on Friday, April 6, 2001. It is anticipated that the CACM subcommittee will provide the Committee an opportunity to comment on any model local rules it develops.

Patricia S.Ketchum

03/02/01

MEMORANDUM TO: THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

SUBJECT: Automatic Adjustment of Certain Dollar Amounts in Official Bankruptcy Forms

Section 104(b) of the Bankruptcy Code provides for the automatic adjustment of certain dollar amounts in the Code to reflect changes in the Consumer Price Index for All Urban Consumers. These adjustments are made by the Judicial Conference every three years according to a schedule and a formula specified in the statute. Adjustments to these dollar amounts are scheduled to take effect on April 1, 2001. Certain dollar amounts in the Code that are subject to automatic adjustment every three years appear also in the official forms. The Judicial Conference has approved the implementation of § 104(b) by the Administrative Office of the United States without recurring action by the Judicial Conference.

The two official forms affected by the adjustments to dollar amounts required under § 104(b) are Schedule E, Creditors Holding Claims Entitled to Priority, and the Proof of Claim. Both forms make reference to certain maximum amounts entitled to priority under § 507(a) of the Code. Copies of the two forms as they will be on April 1, 2001, are attached. Also attached is a copy of the notice announcing the new dollar amounts, which appeared in the Federal Register on February 20, 2001. The notice includes a chart showing the current and new dollar amounts for each affected provision of the Code.

Patricia S. Ketchum
03/01/01

Attachments



In re _____
Debtor

Case No. _____
(if known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$4,650* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(3).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$4,650* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

Deposits by individuals

Claims of individuals up to \$2,100* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

In re _____,
Debtor

Case No. _____
(if known)

Alimony, Maintenance, or Support

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

Taxes and Certain Other Debts Owed to Governmental Units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

Commitments to Maintain the Capital of an Insured Depository Institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

* Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

____ continuation sheets attached

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		PROOF OF CLAIM
Name of Debtor _____		Case Number _____
<p>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</p>		
Name of Creditor (The person or other entity to whom the debtor owes money or property): _____		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and address where notices should be sent: _____		
Telephone number: _____		
Account or other number by which creditor identifies debtor: _____		Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
<p>1. Basis for Claim</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____ </div> <div style="width: 45%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ <div style="text-align: center;">(date) (date)</div> </div> </div>		
2. Date debt was incurred: _____		3. If court judgment, date obtained: _____
<p>4. Total Amount of Claim at Time Case Filed: \$ _____</p> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.</p> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<p>5. Secured Claim.</p> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<p>6. Unsecured Priority Claim.</p> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
<p>7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.</p> <p>8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.</p> <p>9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>		THIS SPACE IS FOR COURT USE ONLY
Date _____	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): _____	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

— DEFINITIONS —

Debtor

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Total Amount of Claim at Time Case Filed:

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

5. Secured Claim:

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

6. Unsecured Priority Claim:

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

7. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

8. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

Billing Code 221055]

JUDICIAL CONFERENCE OF THE UNITED STATES
REVISION OF CERTAIN DOLLAR AMOUNTS IN THE BANKRUPTCY CODE
PRESCRIBED UNDER SECTION 104(B) OF THE CODE

AGENCY: Judicial Conference of the United States

ACTION: Notice

SUMMARY: Certain dollar amounts in title 11, United States Code, are increased.

FOR FURTHER INFORMATION CONTACT: Francis F. Szczebak, Chief, Bankruptcy Judges Division, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 502-1900.

SUPPLEMENTARY INFORMATION: Section 108 of the Bankruptcy Reform Act of 1994 established the mechanism for the automatic three-year adjustment of dollar amounts in certain sections of the Bankruptcy Code by adding subsection (b) to section 104 of title 11. That provision states:

(b)(1) On April 1, 1998, and at each 3-year interval ending April 1 thereafter, each dollar amount in effect under [the designated sections of the code] immediately before such April 1 shall be adjusted --

(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(B) to round to the nearest \$25 the dollar amount that represents such change.

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), 522(d), and 523(a)(2)(C) [of the Bankruptcy Code].

(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.

Revision of Certain Dollar Amounts in Bankruptcy Code

Notice is hereby given that the dollar amounts are increased in the sections in title 11, United States Code, as set out in the following chart. These increases ~~do not~~ apply to cases commenced before the effective date of the adjustments, i.e., April 1, 2001. Official Bankruptcy Forms 6E and 10 also will be amended to reflect these adjusted dollar amounts.

Dated: February 13, 2001

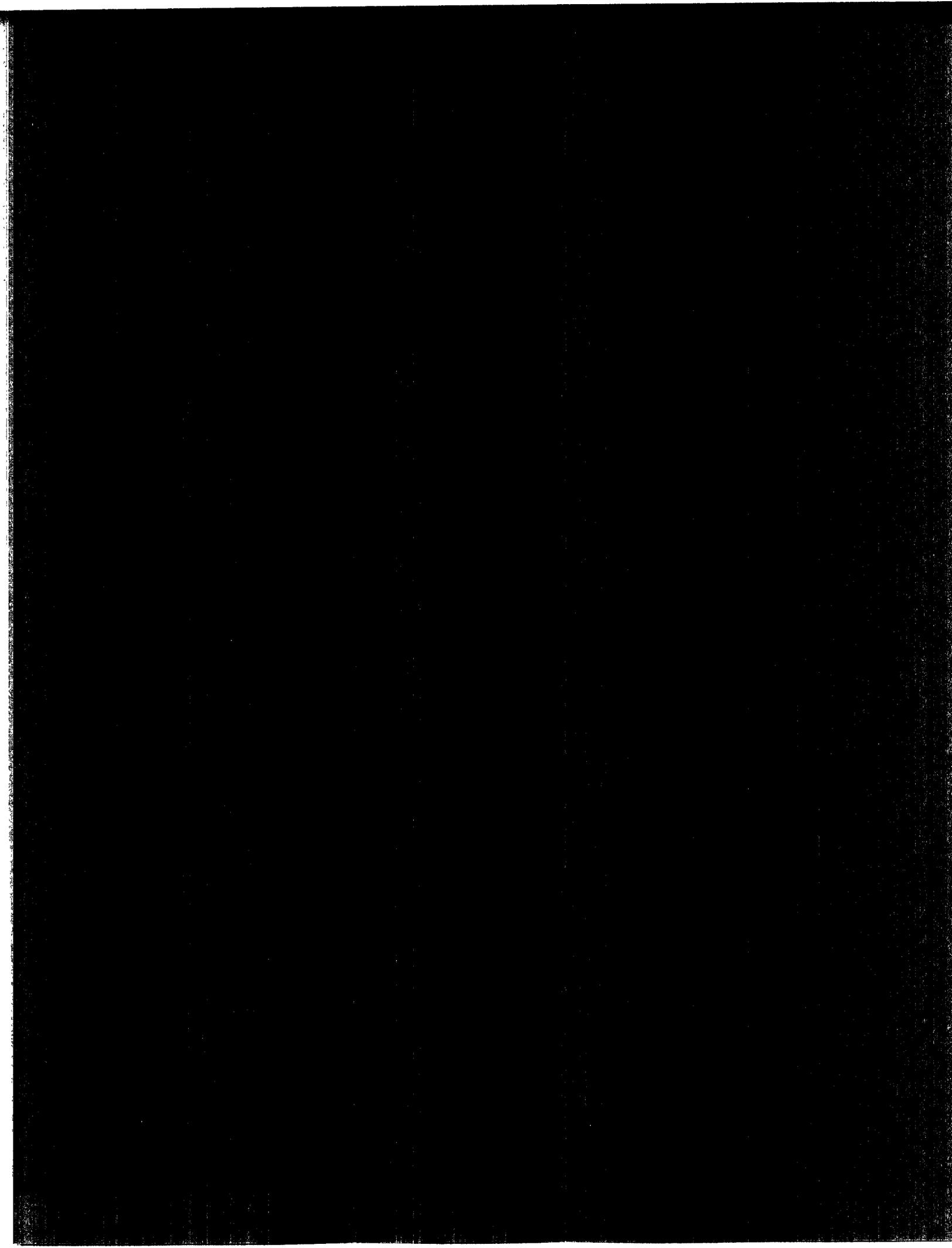


Francis F. Szczebak

Chief, Bankruptcy Judges Division

Adjustment of Certain Dollar Amounts in Title 11, United States Code		
11 U.S.C.	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
Section 109(e) - allowable debt limits for filing bankruptcy under Chapter 13	\$269,250 (each time it appears) \$807,750 (each time it appears)	\$290,525 (each time it appears) \$871,550 (each time it appears)
Section 303(b) - minimum aggregate claims needed for the commencement of an involuntary bankruptcy		
(1) - in paragraph (1)	\$10,775	\$11,625
(2) - in paragraph (2)	\$10,775	\$11,625
Section 507(a) - priority claims		
(1) - in paragraph (3)	\$ 4,300	\$4,650
(2) - in paragraph (4)(B)(i)	\$ 4,300	\$4,650
(3) - in paragraph (5)	\$ 4,300	\$4,650
(4) - in paragraph (6)	\$ 1,950	\$2,100
Section 522(d) - value of property exemptions allowed to the debtor		
(1) - in paragraph (1)	\$16,150	\$17,425
(2) - in paragraph (2)	\$ 2,575	\$ 2,775
(3) - in paragraph (3)	\$ 425 \$ 8,625	\$ 450 \$ 9,300
(4) - in paragraph (4)	\$ 1,075	\$ 1,150
(5) - in paragraph (5)	\$ 850 \$ 8,075	\$ 925 \$ 8,725
(6) - in paragraph (6)	\$ 1,625	\$ 1,750
(7) - in paragraph (8)	\$ 8,625	\$ 9,300
(8) - in paragraph (11)(D)	\$16,150	\$17,425
Section 523(a)(2)(C) - "luxury goods and services" or cash advances obtained by the consumer debtor within 60 days before the filing of a bankruptcy petition, which are considered nondischargeable	\$1,075 (each time it appears)	\$1,150 (each time it appears)





Billing Code 221055]

JUDICIAL CONFERENCE OF THE UNITED STATES
REVISION OF CERTAIN DOLLAR AMOUNTS IN THE BANKRUPTCY CODE
PRESCRIBED UNDER SECTION 104(B) OF THE CODE

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(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(B) to round to the nearest \$25 the dollar amount that represents such change.

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Revision of Certain Dollar Amounts in Bankruptcy Code

Notice is hereby given that the dollar amounts are increased in the sections in title 11, United States Code, as set out in the following chart. These increases **do not** apply to cases commenced before the effective date of the adjustments, i.e., April 1, 2001. Official Bankruptcy Forms 6E and 10 also will be amended to reflect these adjusted dollar amounts.

Dated: February 13, 2001



Francis F. Szczebak

Chief, Bankruptcy Judges Division

Adjustment of Certain Dollar Amounts in Title 11, United States Code		
11 U.S.C.	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
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(7) - in paragraph (8)	\$ 8,625	\$ 9,300
(8) - in paragraph (11)(D)	\$16,150	\$17,425
Section 523(a)(2)(C) - "luxury goods and services" or cash advances obtained by the consumer debtor within 60 days before the filing of a bankruptcy petition, which are considered nondischargeable	\$1,075 (each time it appears)	\$1,150 (each time it appears)

In re _____
Debtor

Case No. _____
(if known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$4,650* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(3).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$4,650* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

Deposits by individuals

Claims of individuals up to \$2,100* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

In re _____,
Debtor

Case No. _____
(if known)

Alimony, Maintenance, or Support

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

Taxes and Certain Other Debts Owed to Governmental Units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

Commitments to Maintain the Capital of an Insured Depository Institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

* Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

____ continuation sheets attached

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		PROOF OF CLAIM
Name of Debtor	Case Number	
<p>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</p>		
Name of Creditor (The person or other entity to whom the debtor owes money or property):	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	
Name and address where notices should be sent:	<input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.	
Telephone number:	<input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Account or other number by which creditor identifies debtor:		THIS SPACE IS FOR COURT USE ONLY
		Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
<p>1. Basis for Claim</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____ </div> <div style="width: 45%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date) </div> </div>		
2. Date debt was incurred:		3. If court judgment, date obtained:
<p>4. Total Amount of Claim at Time Case Filed: \$ _____</p> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.</p> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<p>5. Secured Claim.</p> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	<p>6. Unsecured Priority Claim.</p> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
<p>7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.</p> <p>8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.</p> <p>9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>		THIS SPACE IS FOR COURT USE ONLY
Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules

— DEFINITIONS —

Debtor

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Total Amount of Claim at Time Case Filed:

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

5. Secured Claim:

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

6. Unsecured Priority Claim:

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

7. Credits:

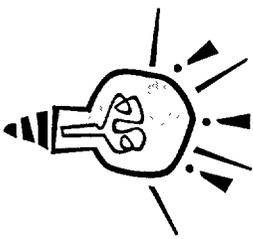
By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

8. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.



THE GESTATION OF AN AMENDMENT



1. Advisory Committee considers proposals for amendments. If approved, prepares draft amendments.
2. This period is of indeterminate length.
3. Proposals come from Committee members, the Reporter, judges, clerks, or the public, or result from statutory changes, case law developments, or experience.

Proposed amendments may be at different stages of the process at the same time, i.e., amendments can be at the Supreme Court while others are in the public comment stage or still being discussed by the Advisory Committee.

YEAR 1

Advisory Committee approves draft of proposed amendments.
(January-May)

Presents "preliminary draft" to Standing Committee, usually at the summer meeting, with request to publish.
(June)

If approved, preliminary draft amendments are published and comments invited.
(August)

YEAR 2

Advisory Committee reviews written comments and holds hearing(s). Public comment period closes.
(January - March)

Advisory Committee completes review of comments, final draft of amendments, draft memorandum to Standing Committee re: comments, also memorandum re: controversies, minority views of Advisory Committee members, etc., (if appropriate).
(March - April)

Standing Committee reviews final draft; may 1) approve 2) approve with changes, or 3) send back to Advisory Committee.
(June)

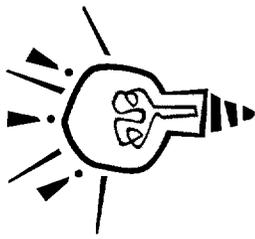
Judicial Conference considers amendments submitted by Standing Committee and if approved, forwards to Supreme Court. (September)

YEAR 3

Supreme Court decides whether to prescribe amendments and, if so, forwards them to Congress.
(March or April)
(must be by May 1)

Congress can alter or reject during the next seven months. If Congress does not act, amendments take effect December 1.

THE GESTATION OF AN AMENDMENT

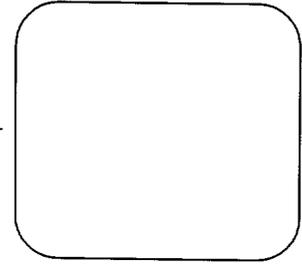
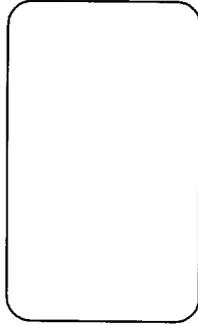
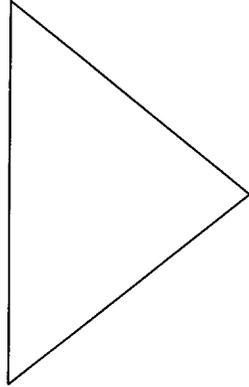


YEAR 1

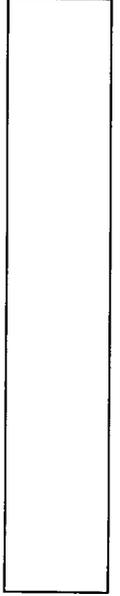
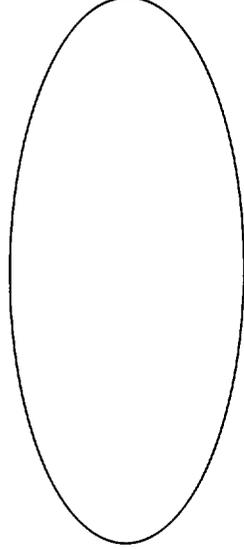
YEAR 2

YEAR 3

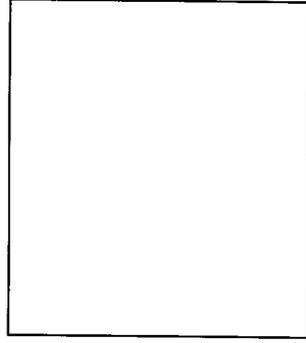
Rule 9014
New Rule 7007.1
(FRAP Rules 6, 33)
Official Forms



1004, 1004.1, 2004,
2014, 2015(a)(5),
4004, 9014, 9027,
Official Form 1



1007, 2002, 3016,
3017, 3020, 9006,
9020, 9022, and
Official Form 7
(Civil Rule 5)



Effective Dates of Proposed Bankruptcy Rules Amendments

December 1, 2001

1007
2002(c)
2002(g)
3016
3017
3020
9006
9020
9022

December 1, 2002

1004
1004.1
2004
2014
2015(a)(5)
4004
9014
9027

Agenda Item 17

The September 13 - 14, 2001 Meeting
will be held at
The John Carver Inn
Plymouth, Massachusetts

~***~

Agenda Item 18
will be an oral discussion

