

**TO: Honorable David F. Levi, Chair
Standing Committee on Rules of Practice
and Procedure**

**FROM: Honorable A. Thomas Small, Chair
Advisory Committee on Bankruptcy Rules**

DATE: May 17, 2004

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 25-26, 2004, at Amelia Island, Florida. The Advisory Committee considered public comments regarding the preliminary draft of proposed amendments to Bankruptcy Rules 1007, 3004, 3005, 4008, 7004, and 9006 that were published in August 2003. The Advisory Committee received only seven comments on the proposed amendments to the Rules, and the comments are summarized later in this report. Since no person who submitted a written comment requested to appear at the public hearing scheduled for January 30, 2004, the hearing was canceled. The Advisory Committee recommends that the Standing Committee approve the amendments and transmit them to the Judicial Conference. The proposed amendments and the comments received thereon are set out below in the Action Items section of this report.

Amendments to three Official Forms, Forms 6-G, 16D, and 17, also are recommended for approval by the Standing Committee and transmission to the Judicial Conference. The amendments to Forms 16D and 17 are technical in nature and are necessary because of a previous amendment effective December 1, 2003, that abrogated Official Form 16C. These amendments are

recommended with an effective date of December 1, 2004. The amendments to Official Form 6-G are necessary because of the amendment proposed to Rule 1007 that will become effective no sooner than December 1, 2005. Thus, the recommended effective date for the amendments to Official Form 6-G is December 1, 2005.

The Advisory Committee also studied a number of proposals to amend the Bankruptcy Rules. After careful consideration, the Advisory Committee resolved to recommend that the Standing Committee approve for publication a preliminary draft of proposed amendments to Bankruptcy Rules 1009, 2002, 4002, 7004, and 9001, and to Schedule I of Official Form 6. The Style Consultants to the Standing Committee offered a number of suggestions that were considered by the Advisory Committee's Style Subcommittee, and the proposals set out below in the Action Items section of the report reflect those joint efforts.

II Action Items

- A. Proposed Amendments to Bankruptcy Rules 1007, 3004, 3005, 4008, 7004, and 9006, and Official Forms 6, 16D, and 17 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference.

The Advisory Committee on Bankruptcy Rules recommends that the Standing Committee approve the following amendments for submission to the Judicial Conference.

1. *Public Comment.*

The preliminary draft of the proposed amendments to Bankruptcy Rules 1007, 3004, 3005, 4008, 7004, and 9006 was published for comment in August 2003. A public hearing on the preliminary draft was scheduled for January 30, 2004, but there were no requests to appear at the hearing. There were only seven comments on the proposals, and they are summarized below immediately following each of the rules to which the particular comment applied. The Advisory Committee reviewed these comments and approved the amendments to the rules either as published or with slight changes that are described in the Changes Made After Publication section.

2. *Synopsis of Proposed Amendments:*

- (a) Rule 1007 is amended to require the debtor in a voluntary case to submit with the petition a list of entities to which notices will be sent in the case. The listed parties are identified as the entities listed or to be listed on Schedules D through H of the Official Forms.

- (b) Rule 3004 is amended to conform the rule to § 501(c) of the Bankruptcy Code. The amendment clarifies that the debtor or trustee may not file a proof of claim until after the time for filing a proof by a particular creditor has expired.
- (c) Rule 3005 is amended to delete any reference to a creditor filing a proof of claim that supersedes a claim filed on behalf of the creditor by a codebtor. The amendment thus conforms the rule to § 501(b) of the Bankruptcy Code.
- (d) Rule 4008 is amended to establish a deadline for filing a reaffirmation agreement with the court. The amendment deletes the former provision of the rule that governed the timing of the reaffirmation agreement and discharge hearing. These restrictions on the court's docket are unduly burdensome and the amendment provides the court with the discretion to set and hold these hearings at appropriate times in the circumstances presented in the case.
- (e) Rule 7004 is amended to authorize the clerk specifically to sign, seal, and issue a summons electronically. The amendment does not address the service requirements for a summons which are set out in other provisions of Rule 7004.
- (f) Rule 9006 is amended to clarify that the three day period is added to the end of the time period for taking action when service is accomplished through certain specified means. This amendment is intended to conform as closely as possible to the amendment being proposed by the Advisory Committee on Civil Rules.
- (g) Schedule G of Official Form 6 is amended to delete the note that informed the preparer of the Schedule that the entities listed on the schedule would not automatically receive notice of the case. The amendment to Rule 1007 will require the person who prepares the schedules to list the entities on the mailing matrix of persons to whom notice of the case will be sent.
- (h) Official Form 16D is amended to conform to the changes made by the December 1, 2003, abrogation of Official Form 16C.
- (i) Official Form 17 is amended to conform to the changes made by the December 1, 2003, abrogation of Official Form 16C.

3. *Text of Proposed Amendments to Rules 1007, 3004, 3005, 4008, 7004, and 9006.*

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

Rule 1007. Lists, Schedules and Statements; Time Limits

1 (a) LIST OF CREDITORS AND EQUITY SECURITY
2 HOLDERS.

3 (1) *Voluntary Case.* In a voluntary case, the debtor shall
4 file with the petition a list containing the name and address of
5 each creditor unless the petition is accompanied by a schedule
6 of liabilities entity included or to be included on Schedules D,
7 E, F, G, and H as prescribed by the Official Forms.

8 (2) *Involuntary Case.* In an involuntary case, the
9 debtor shall file within 15 days after entry of the order for
10 relief, a list containing the name and address of each creditor
11 ~~unless a schedule of liabilities has been filed~~ entity included
12 or to be included on Schedules D, E, F, G, and H as
13 prescribed by the Official Forms.

14 * * * * *

15 (c) TIME LIMITS. In a voluntary case, the ~~The~~ schedules
16 and statements, other than the statement of intention, shall be

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

17 filed with the petition ~~in a voluntary case, or if the petition is~~
18 ~~accompanied by a list of all the debtor's creditors and their~~
19 ~~addresses,~~ within 15 days thereafter, except as provided in
20 subdivisions (d), (e), and (h) of this rule. In an involuntary
21 case the list in subdivision (a)(2), and the schedules and
22 statements, other than the statement of intention, shall be filed
23 by the debtor within 15 days after the entry of the order for
24 relief. ~~Schedules-Lists,~~ schedules, and statements filed prior
25 to the conversion of a case to another chapter shall be deemed
26 filed in the converted case unless the court directs otherwise.
27 Any extension of time for the filing of the schedules and
28 statements may be granted only on motion for cause shown
29 and on notice to the United States trustee and to any
30 committee elected under § 705 or appointed under § 1102 of
31 the Code, trustee, examiner, or other party as the court may
32 direct. Notice of an extension shall be given to the United
33 States trustee and to any committee, trustee, or other party as
34 the court may direct.

35 * * * * *

36 (g) PARTNERSHIP AND PARTNERS. The general
37 partners of a debtor partnership shall prepare and file the list

Subdivision (c) is amended to reflect that subdivision (a)(1) no longer requires the debtor to file a schedule of liabilities with the petition in lieu of a list of creditors. The filing of the list is mandatory, and subdivision (b) of the rule requires the filing of schedules. Thus, subdivision (c) no longer needs to account for the possibility that the debtor can delay filing a schedule of liabilities when the petition is accompanied by a list of creditors. Subdivision (c) simply addresses the situation in which the debtor does not file schedules or statements with the petition, and the procedure for seeking an extension of time for filing.

Other changes are stylistic.

Public Comment on Proposed Amendments to Rule 1007:

No comments were received on these proposed amendments.

Changes Made After Publication and Comment:

No changes since publication.

Rule 3004. Filing of Claims by Debtor or Trustee

1 If a creditor ~~fails to file~~ does not timely file a proof of
2 claim under Rule 3002(c) or 3003(c), ~~on or before the first~~
3 ~~date set for the meeting of creditors called pursuant to~~
4 ~~§ 341(a) of the Code~~, the debtor or trustee may ~~do so in the~~
5 ~~name of the creditor~~, file a proof of the claim within 30 days
6 after the expiration of the time for filing claims prescribed by
7 Rule 3002(c) or 3003(c), whichever is applicable. The clerk
8 shall forthwith ~~mail~~ give notice of the filing to the creditor,

9 the debtor and the trustee. ~~A proof of claim filed by a creditor~~
10 ~~pursuant to Rule 3002 or Rule 3003(c), shall supersede the~~
11 ~~proof filed by the debtor or trustee.~~

COMMITTEE NOTE

The rule is amended to conform to § 501(c) of the Code. Under that provision, the debtor or trustee may file proof of a claim if the creditor fails to do so in a timely fashion. The rule previously authorized the debtor and the trustee to file a claim as early as the day after the first date set for the meeting of creditors under § 341(a). Under the amended rule, the debtor and trustee must wait until the creditor's opportunity to file a claim has expired. Providing the debtor and the trustee with the opportunity to file a claim ensures that the claim will participate in any distribution in the case. This is particularly important for claims that are nondischargeable.

Since the debtor and trustee cannot file a proof of claim until after the creditor's time to file has expired, the rule no longer permits the creditor to file a proof of claim that will supersede the claim filed by the debtor or trustee. The rule leaves to the courts the issue of whether to permit subsequent amendment of such proof of claim.

Other changes are stylistic.

Public Comment on Proposed Amendments to Rule 3004:

1. Mr. Mark Van Allsburg, clerk of the bankruptcy court for the District of Hawaii, in Comment 03-BK-004, suggested that the rule should be amended to require that the debtor or trustee who files a proof of claim should be required to notify the holder of the claim that a proof its claim has been filed.

Changes Made After Publication and Comment:

No changes were made after publication. The Advisory Committee concluded that Mr. Van Allsburg's suggestion goes beyond the scope of the published proposal. Consequently, the Committee declined to adopt the suggestion but may consider it in greater detail at a future meeting.

**Rule 3005. Filing of Claim, Acceptance, or Rejection by
Guarantor, Surety, Indorser, or Other Codebtor**

1 (a) FILING OF CLAIM. If a creditor does not timely file has
2 ~~not filed~~ a proof of claim under ~~pursuant to~~ Rule 3002(c) or
3 3003(c), any entity that is or may be liable with the debtor to
4 that creditor, or who has secured that creditor, ~~may,~~ may file
5 a proof of the claim within 30 days after the expiration of the
6 time for filing claims prescribed by Rule 3002(c) or Rule
7 3003(c) whichever is applicable, ~~execute and file a proof of~~
8 ~~claim in the name of the creditor, if known, or if unknown, in~~
9 ~~the entity's own name.~~ No distribution shall be made on the
10 claim except on satisfactory proof that the original debt will
11 be diminished by the amount of distribution. ~~A proof of~~
12 ~~claim filed by a creditor pursuant to Rule 3002 or 3003(c)~~
13 ~~shall supersede the proof of claim filed pursuant to the first~~
14 ~~sentence of this subdivision.~~

15 * * * * *

COMMITTEE NOTE

The rule is amended to delete the last sentence of subdivision (a). The sentence is unnecessary because if a creditor has filed a timely claim under Rule 3002 or 3003(c), the codebtor cannot file a proof of such claim. The codebtor, consistent with § 501(b) of the Code, may file a proof of such claim only after the creditor's time to file has expired. Therefore, the rule no longer permits the creditor to file a

superseding claim. The rule leaves to the courts the issue of whether to permit subsequent amendment of the proof of claim.

The amendment conforms the rule to § 501(b) by deleting language providing that the codebtor files proof of the claim in the name of the creditor.

Other amendments are stylistic.

Public Comment on Proposed Amendments to Rule 3005:

1. Hon. Dennis Michael Lynn, United States Bankruptcy Judge for the Northern District of Texas, in Comment 03-BK-005 suggested some stylistic changes to the rule to make it conform more closely to the language of Rule 3004, as amended. The Advisory Committee found that his suggestions improved the rule by making it consistent with the companion rule without changing the meaning of the rule. Thus, those suggestions were adopted.

Changes Made After Publication and Comment:

1. The reference on line 2 of Rule 3005 to “Rule 3002 or 3003(c)” was changed to read “Rule 3002(c) or 3003(c)” to make it parallel to the language in Rule 3004.
2. The phrase “file a proof of the claim” from line 7 of the proposed rule was moved up to line 4 of the proposed amendment immediately after the word “may”. This makes the structure of Rules 3004 and 3005 more consistent.

Rule 4008. Discharge and Reaffirmation Hearing Filing of Reaffirmation Agreement

1 A reaffirmation agreement shall be filed not later than 30
2 days after the entry of an order granting a discharge or
3 confirming a plan in a chapter 11 reorganization case of an
4 individual debtor. The court, for cause, may extend the time,
5 and leave shall be freely given when justice so requires. Not

6 ~~more than 30 days following the entry of an order granting or~~
7 ~~denying a discharge, or confirming a plan in a chapter 11~~
8 ~~reorganization case concerning an individual debtor and on~~
9 ~~not less than 10 days notice to the debtor and the trustee, the~~
10 ~~court may hold a hearing as provided in § 524(d) of the Code.~~
11 ~~A motion by the debtor for approval of a reaffirmation~~
12 ~~agreement shall be filed before or at the hearing.~~

COMMITTEE NOTE

The rule is amended to establish a deadline for filing reaffirmation agreements. The Code sets out a number of prerequisites to the enforceability of reaffirmation agreements. Among those requirements are that the agreements be entered into prior to the discharge and that they be filed with the court. Since the parties must make their agreement prior to the entry of the discharge, they will have at least 30 days to file the agreement with the court. Requiring the filing of reaffirmation agreements by a certain deadline also serves to inform the court of the need to hold a hearing under § 524(d) whenever the agreement is not accompanied by an appropriate declaration or affidavit from counsel for the debtor.

The rule allows any party to the agreement to file it with the court. Thus, whichever party has a greater incentive to enforce the agreement usually will file it. In the event that the parties fail to timely file the reaffirmation agreement, the rule grants the court broad discretion to permit a late filing.

The rule also is amended by deleting the provisions formerly in the rule regarding the timing of the reaffirmation and discharge hearing. Instead, the rule leaves discretion to the courts to set the hearing at a time appropriate for the particular circumstances presented in the case and consistent with the scheduling needs of the parties.

Public Comment on Proposed Amendments to Rule 4008:

1. Judge Robert E. Grant, United States Bankruptcy Judge for the Northern District of Indiana, in Comment 03-BK-002 expressed support for the adoption of a deadline for the filing of the agreements, but he took issue with the deadline set in the proposed amendment. Specifically, he expressed concern that the rule allowing the agreements to be filed post-discharge will create problems for the courts that will be called upon to determine whether the agreement was made prior to the entry of the discharge as required by the Code. His proposal was to require that the reaffirmation agreement be filed prior to the entry of the discharge in order to avoid this type of litigation.
2. Mr. Henry J. Sommer, a former member of the Committee, submitted Comment 03-BK-003. Mr. Sommer argued that the discharge date is a better deadline for filing the reaffirmation agreement also because in some jurisdictions the cases are closed very quickly after the entry of the discharge. He suggested that if the Committee proceeds with the thirty day post-discharge deadline, that the Committee should amend Rule 5009 to prohibit the closing of cases until 30 days after the entry of the discharge.
3. Mr. Van Allsburg, the Clerk of the Bankruptcy Court for the District of Hawaii, also urged the Committee not to provide a post-discharge deadline for filing reaffirmation agreements in his Comment 03-BK-004. Mr. Van Allsburg noted that the proposed deadlines will extend the life of cases and prevent the clerk from closing the cases as quickly as is done under the current practice. He stated that the delay in the closing of the case also will postpone creditor collection efforts that § 362 (c)(2)(A) would allow once the case is closed.

Changes Made After Publication and Comment:

No changes were made after publication. The Advisory Committee considered the public comments and concluded that the rule should allow post discharge filing of reaffirmation agreements notwithstanding the issues raised in the public comments. In particular, the Committee recognized the problems that can arise if the reaffirmation agreement is not filed until 30 days after the discharge is entered. Nevertheless, the post-discharge filing of the reaffirmation agreement should not itself require the reopening of the case, so the prior action of closing the case should not be too problematic. The filing of a reaffirmation agreement without a declaration or affidavit by counsel for the debtor will inform the court that a hearing must be scheduled, but again may not require a reopening of the case.

The Advisory Committee considered the timing of the filing and selected thirty days after the discharge for several reasons. Most significantly, the timing of the entry of the discharge is subject to local practice, and in many districts the discharge order is entered quite early in a case. The debtor

and creditor who are parties to the reaffirmation agreement may not know when the order will be entered, and if the agreement is made before that time, it should still be enforceable even if it takes a bit longer to accomplish the filing of the agreement with the court. Moreover, the fairly short time after the entry of the discharge that is allowed for filing the agreement should not delay the proceedings generally, and it should bring whatever applicable issues need to be addressed to the attention of the bankruptcy court in a timely fashion. Nothing in the rule as amended would prevent the clerk from closing the case as expeditiously as under current practice. Finally, any delay in the closing of the case should not postpone collection efforts of creditors because § 362(c)(2)(C) of the Bankruptcy Code would already have operated to dissolve the stay of actions against the debtor.

Rule 7004. Process; Service of Summons, Complaint

1 (a) SUMMONS; SERVICE; PROOF OF SERVICE.

2 (1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b),
3 (c)(1), (d)(1), (e)-(j), (l), and (m) F.R.Civ.P. applies in
4 adversary proceedings. Personal service ~~under~~ pursuant to
5 Rule 4(e)-(j) F.R.Civ.P. may be made by any person at least
6 18 years of age who is not a party, and the summons may be
7 delivered by the clerk to any such person.

8 (2) The clerk may sign, seal, and issue a summons
9 electronically by putting an “s/” before the clerk’s name and
10 including the court’s seal on the summons.

11 * * * * *

COMMITTEE NOTE

This amendment specifically authorizes the clerk to issue a summons electronically. In some bankruptcy cases the trustee or debtor in possession may commence hundreds of adversary proceedings simultaneously, and permitting the electronic signing and

sealing of the summonses for those proceedings increases the efficiency of the clerk's office without any negative impact on any party. The rule only authorizes electronic issuance of the summons. It does not address the service requirements for the summons. Those requirements are set out elsewhere in Rule 7004, and nothing in Rule 7004(a)(2) should be construed as authorizing electronic service of a summons.

Public Comment on Proposed Amendments to Rule 7004:

No comments were received on these proposed amendments.

Changes Made After Publication and Comment:

No changes were made after publication.

Rule 9006. Time

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2

(f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR

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UNDER RULE 5 (b)(2)(C) or (D) F.R.CIV.P. When there is

4

a right or requirement to ~~do some~~ act or undertake some

5

proceedings within a prescribed period after service ~~of a~~

6

~~notice or other paper and the notice or paper other than~~

7

~~process is served~~ and that service is by mail or under Rule 5

8

(b)(2)(C) or (D) F. R. Civ. P., three days ~~shall be~~ are added to

9

after the prescribed period would otherwise expire under Rule

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9006(a).

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COMMITTEE NOTE

Rule 9006(f) is amended, consistent with a corresponding amendment to Rule 6 (e) of the F.R. Civ. P, to clarify the method of counting the number of days to respond after service either by mail or under Civil Rule 5(b)(2)(C) or (D). Three days are added after the prescribed period expires. If, before the application of Rule 9006(f), the prescribed period is less than 8 days, intervening Saturdays, Sundays, and legal holidays are excluded from the calculation under Rule 9006(a). Some illustrations may be helpful.

Under existing Rule 9006(a), assuming that there are no legal holidays and that a response is due in seven days, if a paper is filed on a Monday, the seven day response period commences on Tuesday and concludes on Wednesday of the next week. Adding three days to the end of the period would extend it to Saturday, but because the response period ends on a weekend, the response day would be the following Monday, two weeks after the filing of the initial paper. If the paper is filed on a Tuesday, the seven-day response period would end on the following Thursday, and the response time would also be the following Monday. If the paper is mailed on a Wednesday, the initial seven-day period would expire nine days later on a Friday, but the response would again be due on the following Monday because of Rule 9006(f). If the paper is mailed on a Thursday, however, the seven day period ends on Monday, eleven days after the mailing of the service because of the exclusion of the two intervening Saturdays and Sundays. The response is due three days later on the following Thursday. If the paper is mailed on a Friday, the seven day period would conclude on a Tuesday, and the response is due three days later on a Friday.

No other change in the system of counting time is intended.

Other changes are stylistic.

Public Comment on Proposed Amendments to Rule 9006:

1. Hon. Dennis Michael Lynn (B.J, N.D. Tex.) in Comment 03-BK-005 suggested that Rule 9006(b) be amended to limit an extension of time to file a proof of claim to grounds set out in Rules 3004 and 3005. Upon review, the Advisory Committee concluded that this proposal

is beyond the scope of the proposed amendment to the rule and the Committee will consider the issue at a subsequent meeting.

2. Mr. Alex Manners, Director of Product Development of Compulaw LLC, in Comment 03-BK-007 urged a change in the proposed amendments to Civil Rule 6(e) and Bankruptcy Rule 9006(f). He asserted that the amendment should refer to “calendar” days as the days that are added to the end of the prescribed response periods.
3. The Advisory Committee also received copies of comments on the proposed amendments to Civil Rule 6(e). These comments generally expressed support for the amendment and frequently included the suggestion that the rule refer to “calendar” days in much the same manner as Mr. Manners’ suggestion set out immediately above.

Changes Made After Publication and Comment:

The phrase “would otherwise expire under Rule 9006(a)” was added to the end of the rule to clarify further that the three day extension is to be added to the end of the period that is established under the counting provisions of Rule 9006(a). This also maintains a parallel construction with Civil Rule 6(e) in which the same addition to the rule was made after the public comment period.

4. Proposed Amendments to Schedules G of Official Form 6, and Official Forms 16D and 17.

The Advisory Committee recommends that the Standing Committee approve the amendments to Official Forms 16D and 17, and that this approval be made effective as of December 1, 2004. The Advisory Committee also recommends that the Standing Committee approve the amendment to Official Form 6-G, and that this amendment be made effective as of December 1, 2005. The approval of Official Form 6-G is conditional on the approval of the amendments to Bankruptcy Rule 1007 set out above.

The amended Official Forms are attached to the end of this report.

Schedule G of Official Form 6 is a listing of all of the executory contracts and unexpired leases to which the debtor is a party. The Schedule formerly included a note that reminded the person completing the form that listing an entity on Schedule G would not ensure that the listed party would receive a notice of the filing of the case. The proposed amendment to Rule 1007 would make this directive inaccurate and unnecessary. Under the proposed rule, entities listed on Schedule G will receive the notice. Thus, the proposed amendment to Schedule G deletes the note. Since it implements the amendment to Rule 1007 that was published for comment, the Advisory Committee

believes there is no need to publish for comment the amendment to Schedule G. It should be made effective as of December 1, 2005, along with the amendment to Rule 1007.

The abrogation of Official Form 16C in December 2003 created the need for the conforming amendments to Official Forms 16D and 17. The amendments are brief and the Advisory Committee believes that there is no need to publish the amendments for comment. These changes should be made effective as of December 1, 2004, to provide publishers with an opportunity to have the new forms available on their effective date.

B. Preliminary Draft of Proposed Amendments to Bankruptcy Rules 1009, 2002, 4002, 7004, and 9001, and Schedule I of Official Form 6.

The Advisory Committee recommends that the Standing Committee approve the following preliminary draft of proposed amendments to the Bankruptcy Rules and Official Forms for publication for comment.

1. Synopsis of Preliminary Draft of Proposed Amendments to Bankruptcy Rules 1009, 2002, 4002, 7004, and 9001, and Schedule I of Official Form 6.

- (a) Rule 1009 is amended to include a provision requiring the debtor to submit a corrected statement of social security number when the debtor becomes aware of an error in a statement of social security number previously submitted to the court.
- (b) Rule 2002(g) is amended by adding a new subdivision (g)(4) that authorizes entities and notice providers to agree on the manner and address to which service may be effected. The amendment is intended to facilitate notices to creditors that operate on a national basis, although the rule allows such agreements by any entity with any notice provider. A related amendment to Rule 9001 defines notice providers.
- (c) Rule 4002 is amended by adding a new subdivision (b) to implement the directives of § 521 of the Bankruptcy Code. The amendment requires that a debtor bring certain documentation to the § 341 meeting of creditors to establish current income and ownership of financial accounts, as well as the debtor's most recently filed federal income tax return.
- (d) Rule 7004 is amended to revise the method of service of a summons and complaint on the attorney for the debtor whenever an entity serves the debtor with a summons and complaint. The amendment makes clear that the debtor's attorney must be served with a copy of any summons and complaint against the debtor without regard to the manner in which the summons and complaint was served on the debtor. Under

the current rule, the debtor's attorney must be served only if the summons and complaint was served on the debtor by mail.

- (e) Rule 9001 is amended to add a definition of notice provider to the rule. The definition is to be read in conjunction with the proposed amendment to Rule 2002(g).
- (f) Schedule I of Official Form 6 is amended to require the disclosure of the current income of the non-filing spouse of a debtor.

2. Text of Preliminary Draft of Proposed Amendments to Rules 1009, 2002, 4002, 7004, and 9001, and Schedule I of Official Form 6.

Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements

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2 (c) STATEMENT OF SOCIAL SECURITY NUMBER. If
3 a debtor becomes aware that the statement of social security
4 number submitted under Rule 1007(f) is incorrect, the debtor
5 shall promptly submit a verified amended statement setting
6 forth the correct social security number. The debtor shall give
7 notice of the amendment to all the entities required to be
8 included on the list filed under Rule 1007(a)(1) or (a)(2).

9 ~~(c)~~(d) TRANSMISSION TO UNITED STATES TRUSTEE.

10 The clerk shall ~~forthwith~~ promptly transmit to the United
11 States trustee a copy of every amendment filed or submitted
12 under pursuant to subdivision (a), (b), or (c) or ~~(b)~~ of this rule.

COMMITTEE NOTE

Rule 2002(a)(1) requires that the notice of the § 341 meeting of creditors include the debtor's social security number. It provides creditors with the full number while limiting publication of the social security number otherwise to the final four digits of the number to protect the debtor's identity from others who do not have the same need for that information. If, however, the social security number that the debtor submitted under Rule 1007(f) is incorrect, then the

only notice to the entities contained on the list filed under Rule 1007(a)(1) or (a)(2) would be incorrect. This amendment adds a new subdivision (c) that directs the debtor to submit a verified amended statement of social security number and to give notice of the new statement to all entities in the case who received the notice containing the erroneous social security number.

Former subdivision (c) becomes subdivision (d) and is amended to include new subdivision (c) amendments in the list of documents that the clerk must transmit to the United States trustee. Other amendments are stylistic.

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

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(g) ADDRESSING NOTICES.

(1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision –

(A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice

** The amendment to Rule 9001 should be considered in tandem with the proposed amendment to Rule 2002. Rule 9001 as proposed to be amended is set out at the end of this section of the report.

12 of possible dividend under Rule 3002(c)(5) has not been
13 given; and

14 (B) a proof of interest filed by an equity security
15 holder that designates a mailing address constitutes a filed
16 request to mail notices to that address.

17 (2) If a creditor or indenture trustee has not filed a request
18 designating a mailing address under Rule 2002(g)(1), the
19 notices shall be mailed to the address shown on the list of
20 creditors or schedule of liabilities, whichever is filed later. If
21 an equity security holder has not filed a request designating a
22 mailing address under Rule 2002(g)(1), the notices shall be
23 mailed to the address shown on the list of equity security
24 holders.

25 (3) If a list or schedule filed under Rule 1007 includes the
26 name and address of a legal representative of an infant or
27 incompetent person, and a person other than that
28 representative files a request or proof of claim designating a
29 name and mailing address that differs from the name and
30 address of the representative included in the list or schedule,
31 unless the court orders otherwise, notices under Rule 2002
32 shall be mailed to the representative included in the list or

33 schedules and to the name and address designated in the
34 request or proof of claim.

35 (4) Notwithstanding Rule 2002(g) (1) - (3), an entity and
36 a notice provider may agree that when the notice provider is
37 directed by the court to give a notice, the notice provider shall
38 give the notice to the entity in the manner agreed to and at the
39 address or addresses the entity supplies to the notice provider.
40 That address is conclusively presumed to be a proper address
41 for the notice. The notice provider's failure to use the
42 supplied address does not invalidate any notice that is
43 otherwise effective under applicable law.

44 * * * * *

COMMITTEE NOTE

A new paragraph (g)(4) is inserted in the rule. The new paragraph authorizes an entity and a notice provider to agree that the notice provider will give notices to the entity at the address or addresses set out in their agreement. Rule 9001(9) sets out the definition of a notice provider.

The business of many entities is national in scope, and technology currently exists to direct the transmission of notice (both electronically and in paper form) to those entities in an accurate and much more efficient manner than by sending individual notices to the same creditor by separate mailings. The rule authorizes an entity and a notice provider to determine the manner of the service as well as to set the address or addresses to which the notices must be sent. For example, they could agree that all notices sent by the notice provider to the entity must be sent to a single, nationwide electronic or postal address. They could also establish local or regional addresses to

which notices would be sent in matters pending in specific districts. Since the entity and notice provider also can agree on the date of the commencement of service under the agreement, there is no need to set a date in the rule after which notices would have to be sent to the address or addresses that the entity establishes. Furthermore, since the entity supplies the address to the notice provider, use of that address is conclusively presumed to be proper. Nonetheless, if that address is not used, the notice still may be effective if the notice is otherwise effective under applicable law. This is the same treatment given under Rule 5003(e) to notices sent to governmental units at addresses other than those set out in that register of addresses.

The remaining subdivisions of Rule 2002(g) continue to govern the addressing of a notice that is not sent pursuant to an agreement described in Rule 2002(g)(4).

Rule 4002. Duties of Debtor

- 1 (a) GENERAL DUTIES. In addition to performing other
2 duties prescribed by the Code and rules, the debtor shall:
- 3 (1) attend and submit to an examination at the times
4 ordered by the court;
- 5 (2) attend the hearing on a complaint objecting to
6 discharge and testify, if called as a witness;
- 7 (3) inform the trustee immediately in writing as to the
8 location of real property in which the debtor has an interest
9 and the name and address of every person holding money or
10 property subject to the debtor's withdrawal or order if a
11 schedule of property has not yet been filed pursuant to Rule
12 1007;

13 (4) cooperate with the trustee in the preparation of an
14 inventory, the examination of proofs of claim, and the
15 administration of the estate; and

16 (5) file a statement of any change of the debtor's address.

17 **(b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE**
18 **DOCUMENTATION.**

19 (1) *Personal Identification.* Every individual debtor shall
20 bring to the meeting of creditors under § 341 a picture
21 identification issued by a governmental unit and evidence of
22 social security number(s), or provide a written statement that
23 such documentation does not exist or is not in the debtor's
24 possession;

25 (2) *Financial Information.* Unless the trustee, the United
26 States trustee, or the bankruptcy administrator instructs
27 otherwise, every individual debtor shall bring to the meeting
28 of creditors under § 341 and make available to the trustee the
29 following documents or copies of them, or provide a written
30 statement that the documentation does not exist or is not in
31 the debtor's possession:

32 (A) evidence of current income, such as the most
33 recent pay stub;

34 (B) the debtor's most recently filed federal income tax
35 return, including any attachments; and
36 (C) statements for each of the debtor's depository and
37 investment accounts, including checking, savings, and
38 money market accounts, mutual funds and brokerage
39 accounts for the time period that includes the date of
40 the filing of the petition.

COMMITTEE NOTE

The rule is amended to implement the directives of § 521 (3) and (4) of the Code that the debtor cooperate with the trustee to permit the trustee to perform the trustee's duties and to provide the trustee with materials and documents as necessary to the administration of the estate or to determine if the debtor is entitled to a discharge. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521. The rule does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the meeting of creditors under § 341 the documents which the debtor possesses. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials would not be made available to any other party in interest at the § 341 meeting of creditors. Some of the documents may contain otherwise private information that should not be disseminated. For example, the debtor's tax return may include social security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.

Rule 7004. Process; Service of Summons, Complaint

1 * * * * *

2 (b) SERVICE BY FIRST CLASS MAIL.

3 * * * * *

4 (9) Upon the debtor, after a petition has been filed by or
5 served upon the debtor and until the case is dismissed or
6 closed, by mailing a copy of the summons and complaint to
7 the debtor at the address shown in the petition ~~or statement of~~
8 ~~affairs~~ or to such other address as the debtor may designate in
9 a filed writing ~~and, if the debtor is represented by an attorney,~~
10 ~~to the attorney at the attorney's post-office address.~~

11 * * * * *

12 (g) SERVICE ON DEBTOR'S ATTORNEY. If the debtor
13 is represented by an attorney, whenever service is made upon
14 the debtor under this Rule, service shall also be made upon
15 the debtor's attorney by any means authorized under Rule
16 5(b) F. R. Civ. P.

17 * * * * *

COMMITTEE NOTE

Under current Rule 7004, an entity may serve a summons and complaint upon the debtor by personal service or by mail. If the entity chooses to serve the debtor by mail, it must also serve a copy of the summons and complaint on the debtor's attorney by mail. If

the entity effects personal service on the debtor, there is no requirement that the debtor's attorney also be served.

The rule is amended to require service on the debtor's attorney whenever the debtor is served with a summons and complaint. The amendment makes this change by deleting that portion of Rule 7004(b)(9) that requires service on the debtor's attorney when the debtor is served by mail, and relocates the obligation to serve the debtor's attorney into new subdivision (g). Service on the debtor's attorney is not limited to mail service, but may be accomplished by any means permitted under Rule 5(b) F. R. Civ. P.

Rule 9001. General Definitions

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3
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* * * * *

(9) "Notice provider" means any entity approved by the Administrative Office of the United States Courts to give notice to creditors under Rule 2002(g)(4).

(10) ~~(9)~~ "Regular associate" means any attorney regularly employed by, associated with, or counsel to an individual or firm.

(11) ~~(10)~~ "Trustee" includes a debtor in possession in a chapter 11 case.

(12) ~~(11)~~ "United States trustee" includes an assistant United States trustee and any designee of the United States trustee.

COMMITTEE NOTE

The rule is amended to add the definition of a notice provider and to renumber the final three definitions in the rule. A notice provider is an entity approved by the Administrative Office of the United States Courts to enter into agreements with entities to give notice to those entities in the form and manner agreed to by those parties. The new definition supports the amendment to Rule 2002(g)(4) that authorizes a notice provider to give notices under Rule 2002.

Many entities conduct business on a national scale and receive vast numbers of notices in bankruptcy cases throughout the country. Those entities can agree with a notice provider to receive their notices in a form and at an address or addresses that the creditor and notice provider agree upon. There are processes currently in use that provide substantial assurance that notices are not misdirected. Any notice provider would have to demonstrate to the Administrative Office of the United States Courts that it could provide the service in a manner that ensures the proper delivery of notice to creditors. Once the Administrative Office of the United States Courts approves the notice provider to enter into agreements with creditors, the notice provider and other entities can establish the relationship that will govern the delivery of notices in cases as provided in Rule 2002(g)(4).

Schedule I of Official Form 6 is attached to the end of this Report.

III. Information Items

(1) *Proposed Bankruptcy Legislation*

Congress continues to consider extensive reform of the Bankruptcy Code, but recent reports suggest that movement on the pending legislation is not likely. Nevertheless, the Advisory Committee remains ready to make recommendations to the Standing Committee to implement the provisions of the bill if the legislation is enacted.

The Advisory Committee also has begun to work with the Committee on Bankruptcy Administration to address issues such as the venue of cases, and the issuance of first day orders and debtor in possession financing orders, particularly in large chapter 11 cases. A special committee has been formed and will be meeting later this summer to commence a study of these issues with a goal of presenting proposed amendments to the Bankruptcy Rules.

The Advisory Committee also is considering amendments to the proof of claim form, Official Form 10, based on suggestions provided to the Committee by the Claims Processing subgroup of the CM/ECF Working Group. These efforts are ongoing, and it is likely that the Advisory Committee will be presenting proposed amendments to that Official Form to the Standing Committee either in January or June 2005.

(2) Draft Minutes

Draft minutes of the March 2004 meeting of the Advisory Committee are attached.

ATTACHMENTS:

Schedule G of Official Form 6
Official Forms 16D and 17
Schedule I of Official Form 6
Draft Minutes of March 2004 Advisory Committee Meeting

In re _____,
Debtor

Case No. _____
(if known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

COMMITTEE NOTE

The form is amended to implement an amendment to Rule 1007 by deleting the instruction that parties to these contracts and leases will not receive notice of the bankruptcy case unless they are listed on one of the schedules of liabilities. Even though a contract or lease may be an asset of the debtor or the debtor may be current on any lease or contract payment obligations, other parties to these transactions may have an interest in the bankruptcy case and should receive notice.

**Form 16D. CAPTION FOR USE IN ADVERSARY PROCEEDING
~~OTHER THAN FOR A COMPLAINT FILED BY A DEBTOR~~**

United States Bankruptcy Court

_____ District Of _____

In re _____,)	
<i>Debtor</i>)	Case No. _____
)	
)	
_____,)	Chapter _____
<i>Plaintiff</i>)	
)	
)	
)	
_____,)	Adv. Proc. No. _____
<i>Defendant</i>)	

COMPLAINT [*or* other Designation]

[If in a Notice of Appeal (see Form 17) or other notice filed and served by a debtor, this caption must be altered to include the debtor's address and Employer's Tax Identification Number(s) or last four digits of Social Security Number(s) as in Form 16CA.]

COMMITTEE NOTE

The form is amended to reflect the 2003 abrogation of Form 16C. As a complaint initiating an adversary proceeding serves as a notice to the defendant of the filing of an action, a debtor filing an adversary proceeding must follow the notice requirements of § 342(c) of the Code. To protect individual privacy a debtor should use the defendant's copy of the summons to be served with the complaint to provide the information required by § 342(c) to any creditor named as a defendant.

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 reflect the 2003 abrogation of Form 16C.

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 7, 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	
	RELATIONSHIP	AGE
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:

2005 COMMITTEE NOTE

Schedule I (Current Income of Individual Debtor(s)) is amended to require a married debtor filing under chapter 7 of the Code to complete the column labeled "Spouse" whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. This information may be relevant to § 707(b) of the Code or other financial determinations. The relevance of this information to § 707(b) or other determinations is a matter of substantive law and is beyond the scope of these rules.