

AMENDMENTS TO THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT
OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCE-
DURE THAT HAVE BEEN ADOPTED BY THE COURT, PURSUANT
TO 28 U.S.C. 2075



MAY 8, 2006.—Referred to the Committee on the Judiciary and ordered
to be printed

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF SUBMITTAL

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 12, 2006.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have the honor to submit to the Congress the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 1009, 5005, and 7004.

[See infra., pp. _____.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2006, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Bankruptcy Procedure in accordance with the provisions of Section 2075 of Title 28, United States Code.

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

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

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(c) STATEMENT OF SOCIAL SECURITY NUMBER.

If a debtor becomes aware that the statement of social security number submitted under Rule 1007(f) is incorrect, the debtor shall promptly submit an amended verified statement setting forth the correct social security number. The debtor shall give notice of the amendment to all of the entities required to be included on the list filed under Rule 1007(a)(1) or (a)(2).

(d) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall promptly transmit to the United States trustee a copy of every amendment filed or submitted under subdivision (a), (b), or (c) of this rule.

Rule 5005. Filing and Transmittal of Papers

(a) FILING.

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(2) *Filing by Electronic Means.* A court may by local rule permit or require documents to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A document filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.

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(c) ERROR IN FILING OR TRANSMITTAL. A paper intended to be filed with the clerk but erroneously

delivered to the United States trustee, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. A paper intended to be transmitted to the United States trustee but erroneously delivered to the clerk, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the United States trustee. In the interest of justice, the court may order that a paper erroneously delivered shall be deemed filed with the clerk or transmitted to the United States trustee as of the date of its original delivery.

Rule 7004. Process; Service of Summons, Complaint

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(b) SERVICE BY FIRST CLASS MAIL.

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(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.

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

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JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

LEONIDAS RALPH MECHAM
Secretary

November 10, 2005

MEMORANDUM TO THE CHIEF JUSTICE OF THE UNITED STATES AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I have the honor to transmit herewith for consideration of the Court proposed amendments to Rules 1009, 5005, and 7004 of the Federal Rules of Bankruptcy Procedure, which were approved by the Judicial Conference at its September 2005 session. The Judicial Conference recommends that these amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering these proposed amendments, I am transmitting an excerpt from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference and the Report of the Advisory Committee on the Federal Rules of Bankruptcy Procedure.

A handwritten signature in cursive script, reading "Leonidas Ralph Mecham".

Leonidas Ralph Mecham
Secretary

Attachments

EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:

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ELECTRONIC CASE FILING

Rules Recommended for Approval and Transmission

The Advisory Committees on Appellate, Bankruptcy, and Civil Rules submitted proposed uniform amendments to Appellate Rule 25, Bankruptcy Rule 5005, and Civil Rule 5 with a recommendation that they be approved and transmitted to the Judicial Conference. (Federal Rule of Criminal Procedure 49(d) incorporates by reference the filing procedures in Civil Rule 5.) The proposed amendments authorize a court to require electronic case filing by local rule. The amendments were published for public comment for a three-month period beginning November 10, 2004, and expiring on February 15, 2005. Public hearings were scheduled to coincide with hearings earlier scheduled for other proposed rules amendments, and a separate hearing was set for the amendment to the Appellate Rules, which had no other proposed amendments. Only one person asked to testify. Several written comments were received on the proposals.

In August 2004, the Committee on Court Administration and Case Management (CACM) requested that the federal rules of practice be amended on an expedited basis to authorize federal courts to adopt local rules that require parties to file papers electronically. The existing rules authorize a court to adopt local rules that "permit" a party to file papers by electronic means. Although many courts have adopted local rules that require electronic filing, some courts have been reluctant to do so without a more explicit grant of authority.

CACM urged the Committee to recommend these rules amendments to promote broader use of the Case Management/Electronic Case Files system now being deployed in the courts nationwide. CACM concluded that mandatory electronic case filing would achieve significant cost savings for the federal courts.

Several major bar organizations, including the American Bar Association, expressed concern during the public comment period that mandatory electronic case filing would pose hardships for litigants who do not have access to a personal computer and suggested that the national rules require that any local rule include appropriate exceptions. Such a provision was not included in the version published for public comment because a study of existing local court rules requiring parties to file papers electronically confirmed that each set of rules already excepted pro se litigants and others for good cause. Nonetheless, in light of the public comment and concerns, the advisory committees revised the proposed amendments to authorize a court to require electronic case filing by local rule only if reasonable exceptions are allowed. The Appellate Rules Committee added a provision in its proposed Committee Note to recognize that a local rule may direct a party to also file a hard copy of a paper that must be filed by electronic means. This provision responds to distinctive features of appellate practice and is not included in the other proposed rules.

The Committee concurred with the advisory committees' recommendations.

Recommendation: That the Judicial Conference approve proposed amendments to Appellate Rule 25(a)(2)(D), Bankruptcy Rule 5005(a)(2), and Civil Rule 5(e) and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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FEDERAL RULES OF BANKRUPTCY PROCEDURERules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1009, 5005(c), and 7004 with a recommendation that they be approved and transmitted to the Judicial Conference. The scheduled public hearings on the amendments were canceled because the only person submitting a timely request to appear agreed instead to submit written comments.

The proposed amendment to Rule 1009 requires a debtor to submit a corrected social security number when the debtor learns that a previously submitted social security number is inaccurate and to provide notice of the corrected number to all others who have received the inaccurate number.

Under the proposed amendment to Rule 5005(c), the clerk of the bankruptcy appellate panel and district judges are added to the list of officers who can transmit erroneously delivered papers to the clerk of the bankruptcy court.

The proposed amendment to Rule 7004 makes clear that the debtor's attorney must be served with a copy of any summons and complaint filed against the debtor without regard to the manner in which the summons and complaint was served on the debtor, including personal service. Under the current rule, the debtor's attorney must be served only if the summons and complaint was served on the debtor by mail. Service on the debtor's attorney may be made by any method permitted under Civil Rule 5(b).

The advisory committee withdrew a proposed amendment to Rule 4002 implementing § 521 of the Bankruptcy Code, which requires the debtor to "surrender to the trustee" information and documentation of income and financial assets at the § 341 creditors' meeting. It withdrew the amendment because the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

(Pub. L. No. 109-8) includes several provisions that require amendments to Rule 4002, which will be considered at a later date.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference approve the proposed amendments to Bankruptcy Rules 1009, 5005(c), and 7004 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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JERRY E. SMITH
EVIDENCE RULES

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

**FROM: Honorable Thomas S. Zilly, Chair
Advisory Committee on Bankruptcy Rules**

DATE: May 2, 2005

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 10-11, 2005, in Sarasota, Florida. The purpose of this report is to outline actions taken by the Advisory Committee at its spring meeting. The Advisory Committee considered public comments regarding the preliminary draft of proposed amendments to Bankruptcy Rules 1009, 2002(g), 4002, 5005(c), 7004(b)(9), 7004(g), 9001, and 9036, and Schedule I of Official Form 6 that were published in August 2004 and the preliminary draft of the proposed amendment to Rule 5005(a)(2) that was published in November 2004. After review of the public comments, the Committee gave its final approval to various proposed amendments which we ask the Standing Committee to approve. The proposed amendments to Rules 2002(g), 9001, and 9036 were approved by the Committee by an email ballot and by the Standing Committee before the meeting.

III. Action items

- (A) Proposed Amendments to Bankruptcy Rules 1009, 4002, 5005(a)(2), 5005(c), 7004(b)(9), and 7004(g) 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 proposed amendments to Bankruptcy Rules 1009, 4002, 5005(c), 7004(b)(9), and 7004(g), and Schedule I of Official Form 6 were published for comment in August 2004. The proposed amendment to Rule 5005(a)(2) was published for comment in November 2004. Public hearings on the proposed amendments were scheduled for February 3 and February 7, 2005. There was only one timely request to appear at a hearing and that commentator agreed to submit his comments in writing. The comments on the proposals are summarized immediately following the text of each rule to which the particular comment applied. After review of the comments, the Advisory Committee approved the following proposed amendments either as published or with slight changes that are described in the Changes Made After Publication section. The Committee recommends to the Standing Committee that final approval be given to each of the following amendments:

2. *Synopsis of Proposed Amendments:*

- (a) Rule 1009. This amendment would require the debtor to submit a corrected social security number when the debtor becomes aware of an error in a previously submitted statement.

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- (c) Rule 5005(a)(2). This amendment would allow courts to permit or require electronic filings. The Advisory Committee voted to amend the published rule to add a new second sentence as follows: "Courts requiring electronic filing shall reasonably accommodate parties who cannot feasibly comply with the mandatory electronic filing rule". This change was made in light of the public comments expressing concerns about the burden upon pro se and other litigants who would find it difficult to comply with mandatory filing requirements.

*The advisory committee withdrew the proposed amendment to Rule 4002 for further consideration in light of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. Law No. 109-8).

- (d) Rule 5005(c). This amendment adds district judges and the clerk of the bankruptcy appellate panel to a list of persons who can transmit erroneously delivered papers to the clerk of the bankruptcy court.
 - (e) Rule 7004(b)(9). This amendment removes "or statement of affairs" from the rule. The Advisory Committee voted to amend the Committee Note to explain the removal of this language.
 - (f) Rule 7004(g). This amendment revises 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.
 - (g) An amendment to Schedule I to Form 6 was approved by the Advisory Committee. After the meeting, however, the amendment was referred back to the Forms Subcommittee for further review in light of the bankruptcy legislation.
3. *Text of Proposed Amendments to Rules 1009, 4002, 5005(a)(2), 5005(c), 7004(b)(9), and 7004(g)*

The text of the proposed amendments and Committee Notes, summaries of the comments which apply to each of the proposed amendments, and changes made since publication are attached to this report.

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ATTACHMENTS

Text of proposed amendments recommended for approval and Committee Notes, summaries of the comments on each proposed amendment, and changes made since publication.

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

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

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(c) STATEMENT OF SOCIAL SECURITY NUMBER.

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If a debtor becomes aware that the statement of social

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security number submitted under Rule 1007(f) is incorrect,

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the debtor shall promptly submit an amended verified

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statement setting forth the correct social security number.

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The debtor shall give notice of the amendment to all of the

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entities required to be included on the list filed under Rule

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1007(a)(1) or (a)(2).

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(d) TRANSMISSION TO UNITED STATES TRUSTEE.

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The clerk shall ~~forthwith~~ promptly transmit to the United

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States trustee a copy of every amendment filed or submitted

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under pursuant to subdivision (a), (b), or (c) or (b) of this rule.

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

COMMITTEE NOTE

Subdivision (c). Rule 2002(a)(1) provides 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.

Subdivision (d). 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.

Changes Made After Publication: No changes since publication.

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Rule 5005. Filing and Transmittal of Papers

1 (a) FILING.

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(2) *Filing by Electronic Means.* A court may by local rule permit or require documents to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A document filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.

* * * * *

(c) ERROR IN FILING OR TRANSMITTAL. A paper intended to be filed with the clerk but erroneously delivered to the United States trustee, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk

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17 of the district court shall, after the date of its receipt has been noted
18 thereon, be transmitted forthwith to the clerk of the bankruptcy court.
19 A paper intended to be transmitted to the United States trustee but
20 erroneously delivered to the clerk, the trustee, the attorney for the
21 trustee, a bankruptcy judge, a district judge, the clerk of the
22 bankruptcy appellate panel, or the clerk of the district court shall,
23 after the date of its receipt has been noted thereon, be transmitted
24 forthwith to the United States trustee. In the interest of justice, the
25 court may order that a paper erroneously delivered shall be deemed
26 filed with the clerk or transmitted to the United States trustee as of the
27 date of its original delivery.

COMMITTEE NOTE

Subdivision (a). Amended Rule 5005(a)(2) acknowledges that many courts have required electronic filing by means of a standing order, procedures manual, or local rule. These local practices reflect the advantages that courts and most litigants realize from electronic filings. Courts requiring electronic filing must make reasonable exceptions for persons for whom electronic filing of documents constitutes an unreasonable denial of access to the courts.

Experience with the rule will facilitate convergence on uniform exceptions in an amended Rule 5005(a)(2).

Subdivision (c). The rule is amended to include the clerk of the bankruptcy appellate panel among the list of persons required to transmit to the proper person erroneously filed or transmitted papers. The amendment is necessary because the bankruptcy appellate panels were not in existence at the time of the original promulgation of the rule. The amendment also inserts the district judge on the list of persons required to transmit papers intended for the United States trustee but erroneously sent to another person. The district judge is included in the list of persons who must transmit papers to the clerk of the bankruptcy court in the first part of the rule, and there is no reason to exclude the district judge from the list of persons who must transmit erroneously filed papers to the United States trustee.

Changes Made After Publication: The published version of the Rule did not include the sentence set out on lines 7-10 above. The Advisory Committee concluded, based on the written comments received and additional Advisory Committee consideration, that the text of the rule should include a statement regarding the need for courts to protect access to the courts for those whose status might not allow for electronic participation in cases. The published version had relegated this notion to the Committee Note, but further deliberations led to the conclusion that this matter is too important to leave to the Committee Note and instead should be included in the text of the rule.

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Rule 7004. Process; Service of Summons, Complaint

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(b) SERVICE BY FIRST CLASS MAIL.

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(9) Upon the debtor, after a petition has been filed by or

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served upon the debtor and until the case is dismissed or

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closed, by mailing a copy of the summons and complaint to

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the debtor at the address shown in the petition or statement of

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affairs or to such other address as the debtor may designate in

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a filed writing and, if the debtor is represented by an attorney,

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to the attorney at the attorney's post-office address.

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(g) ~~[abrogated]~~ SERVICE ON DEBTOR'S ATTORNEY.

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If the debtor is represented by an attorney, whenever service

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is made upon the debtor under this Rule, service shall also be

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made upon the debtor's attorney by any means authorized

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under Rule 5(b) F. R. Civ. P.

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.

Subdivision (b)(9). The rule is amended to delete the reference in subdivision (b)(9) to the debtor's address as set forth in the statement of financial affairs. In 1991, the Official Form of the statement of financial affairs was revised and no longer includes a question regarding the debtor's current residence. Since that time, Official Form 1, the petition, has required the debtor to list both the debtor's residence and mailing address. Therefore, the subdivision is amended to delete the statement of financial affairs as a document that might contain an address at which the debtor can be served.

Subdivision (g). 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.

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Changes Made After Publication: The Committee Note was amended to add the final paragraph of the Note. The new paragraph describes the reason for the deletion of the reference in the rule to the statement of affairs as a source for the debtor's address. This was a secondary reason for amending the rule, and even in the absence of public comment on the proposed amendment, the Advisory Committee believes that the additional explanation in the Committee Note is appropriate.

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