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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 PROCEDURE THAT HAVE BEEN ADOPTED BY THE SUPREME COURT, PURSUANT TO 28 U.S.C. 2075

JUNE 3, 2008.—Referred to the Committee on the Judiciary and ordered to be printed

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LETTER OF SUBMITTAL

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 23, 2008.

Hon. NANCY PELOSI,
Speaker of the House of Representatives,
Washington, DC.

DEAR MADAM 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.

April 23, 2008

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 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 7012, 7022, 7023.1, 8001, 8003, 9006, 9009, and 9024, and new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011.

[See infra., pp. ___ ___ ___.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2008, 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 1005. Caption of Petition

The caption of a petition commencing a case under the Code shall contain the name of the court, the title of the case, and the docket number. The title of the case shall include the following information about the debtor: name, employer identification number, last four digits of the social-security number or individual debtor's taxpayer-identification number, any other federal taxpayer-identification number, and all other names used within eight years before filing the petition. If the petition is not filed by the debtor, it shall include all names used by the debtor which are known to the petitioners.

Rule 1006. Filing Fee

(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the filing fee except as

provided in subdivisions (b) and (c) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) *Application to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments.

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(3) *Postponement of Attorney's Fees.* All

installments of the filing fee must be paid in full before the debtor or chapter 13 trustee may make further payments to an attorney or any other person who renders services to the debtor in connection with the case.

(c) WAIVER OF FILING FEE. A voluntary chapter 7 petition filed by an individual shall be accepted for filing if accompanied by the debtor's application requesting a waiver under 28 U.S.C. § 1930(f), prepared as prescribed by the appropriate Official Form.

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

(a) CORPORATE OWNERSHIP STATEMENT, LIST OF CREDITORS AND EQUITY SECURITY HOLDERS, AND OTHER LISTS.

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(4) *Chapter 15 Case.* In addition to the documents required under § 1515 of the Code, a foreign representative filing a petition for recognition under chapter 15 shall file with the petition: (A) a corporate ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under § 1519 of the Code.

(5) *Extension of Time.* Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to the United States trustee and to any

trustee, committee elected under § 705 or appointed under § 1102 of the Code, or other party as the court may direct.

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

(1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file the following schedules, statements, and other documents, prepared as prescribed by the appropriate Official Forms, if any:

(A) schedules of assets and liabilities;

(B) a schedule of current income and expenditures;

(C) a schedule of executory contracts and unexpired leases;

(D) a statement of financial affairs;

(E) copies of all payment advices or other

evidence of payment, if any, received by the debtor from an employer within 60 days before the filing of the petition, with redaction of all but the last four digits of the debtor's social-security number or individual taxpayer-identification number; and

(F) a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Code.

(2) An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(a) of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be served on the trustee and the creditors named in the statement on or before the filing of the statement.

(3) Unless the United States trustee has determined that the credit counseling requirement

of § 109(h) does not apply in the district, an individual debtor must file a statement of compliance with the credit counseling requirement, prepared as prescribed by the appropriate Official Form which must include one of the following:

(A) an attached certificate and debt repayment plan, if any, required by § 521(b);

(B) a statement that the debtor has received the credit counseling briefing required by § 109(h)(1) but does not have the certificate required by § 521(b);

(C) a certification under § 109(h)(3); or

(D) a request for a determination by the court under § 109(h)(4).

(4) Unless § 707(b)(2)(D) applies, an individual debtor in a chapter 7 case shall file a statement of current monthly income prepared as

prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, the information, including calculations, required by § 707(b), prepared as prescribed by the appropriate Official Form.

(5) An individual debtor in a chapter 11 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form.

(6) A debtor in a chapter 13 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, a calculation of disposable income made in accordance with § 1325(b)(3), prepared as prescribed by the

appropriate Official Form.

(7) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of a course concerning personal financial management, prepared as prescribed by the appropriate Official Form. An individual debtor shall file the statement in a chapter 11 case in which § 1141(d)(3) applies.

(8) If an individual debtor in a chapter 11, 12, or 13 case has claimed an exemption under § 522(b)(3)(A) in property of the kind described in § 522(p)(1) with a value in excess of the amount set out in § 522(q)(1), the debtor shall file a statement as to whether there is any proceeding pending in which the debtor may be found guilty of a felony of a kind described in § 522(q)(1)(A) or found liable for a debt of the kind described in § 522(q)(1)(B).

(c) TIME LIMITS. In a voluntary case, the

schedules, statements, and other documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the petition or within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h) of this rule. In an involuntary case, the list in subdivision (a)(2), and the schedules, statements, and other documents required by subdivision (b)(1) shall be filed by the debtor within 15 days of the entry of the order for relief. In a voluntary case, the documents required by paragraphs (A), (C), and (D) of subdivision (b)(3) shall be filed with the petition. Unless the court orders otherwise, a debtor who has filed a statement under subdivision (b)(3)(B), shall file the documents required by subdivision (b)(3)(A) within 15 days of the order for relief. In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7) within 45 days after the first date set for the meeting of

creditors under § 341 of the Code, and in a chapter 11 or 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7). The debtor shall file the statement required by subdivision (b)(8) no earlier than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the Code. Lists, schedules, statements, and other documents filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Except as provided in § 1116(3), any extension of time to file schedules, statements,

and other documents required under this rule may be granted only on motion for cause shown and on notice to the United States trustee, any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

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

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(b) STATEMENT OF INTENTION. The statement of intention may be amended by the debtor at any time before the expiration of the period provided in § 521(a) of the Code. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby.

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Rule 1010. Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign Nonmain Proceeding

(a) SERVICE OF INVOLUNTARY PETITION AND SUMMONS; SERVICE OF PETITION FOR RECOGNITION OF FOREIGN NONMAIN PROCEEDING. On the filing of an involuntary petition or a petition for recognition of a foreign nonmain proceeding, the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. When a petition for recognition of a foreign nonmain proceeding is filed, service shall be made on the debtor, any entity against whom provisional relief is sought under § 1519 of the Code, and on any other party as the court may direct. The summons shall be served with a copy of the petition in the manner

provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(*l*) F.R.Civ.P. apply when service is made or attempted under this rule.

(b) CORPORATE OWNERSHIP STATEMENT. Each petitioner that is a corporation shall file with the involuntary petition a corporate ownership statement containing the information described in Rule 7007.1.

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

(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition, or a party in interest to a petition for recognition of a foreign proceeding,

may contest the petition. In the case of a petition against a partnership under Rule 1004, a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

* * * * *

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

Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court

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(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of a husband and wife shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the

same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).

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Rule 1017. Dismissal or Conversion of Case; Suspension

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(e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S CHAPTER 7 CASE, OR CONVERSION TO A CASE UNDER CHAPTER 11 OR 13, FOR ABUSE. The court may dismiss or, with the debtor's consent, convert an individual debtor's case for abuse under § 707(b) only on motion and after a hearing on notice to the debtor, the trustee, the United States trustee, and any other entity as the court directs.

(1) Except as otherwise provided in § 704(b)(2), a motion to dismiss a case for abuse under

§ 707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss. The party filing the motion shall set forth in the motion all matters to be considered at the hearing. In addition, a motion to dismiss under § 707(b)(1) and (3) shall state with particularity the circumstances alleged to constitute abuse.

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Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case

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(2) *New Filing Periods.* A new time period for filing a motion under § 707(b) or (c), a claim, a

complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence under Rules 1017, 3002, 4004, or 4007, but a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case.

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Rule 1020. Small Business Chapter 11 Reorganization Case

(a) SMALL BUSINESS DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business

debtor. In an involuntary chapter 11 case, the debtor shall file within 15 days after entry of the order for relief a statement as to whether the debtor is a small business debtor. Except as provided in subdivision (c), the status of the case as a small business case shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.

(b) OBJECTING TO DESIGNATION. Except as provided in subdivision (c), the United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.

(c) APPOINTMENT OF COMMITTEE OF

UNSECURED CREDITORS. If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case shall proceed as a small business case only if, and from the time when, the court enters an order determining that the committee has not been sufficiently active and representative to provide effective oversight of the debtor and that the debtor satisfies all the other requirements for being a small business. A request for a determination under this subdivision may be filed by the United States trustee or a party in interest only within a reasonable time after the failure of the committee to be sufficiently active and representative. The debtor may file a request for a determination at any time as to whether the committee has been sufficiently active and representative.

(d) PROCEDURE FOR OBJECTION OR

DETERMINATION. Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; any committee appointed under § 1102 or its authorized agent, or, if no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and any other entity as the court directs.

Rule 1021. Health Care Business Case

(a) HEALTH CARE BUSINESS DESIGNATION. Unless the court orders otherwise, if a petition in a case under chapter 7, chapter 9, or chapter 11 states that the debtor is a health care business, the case shall proceed as a case in which the debtor is a health care business.

(b) MOTION. The United States trustee or a party

in interest may file a motion to determine whether the debtor is a health care business. The motion shall be transmitted to the United States trustee and served on: the debtor; the trustee; any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and any other entity as the court directs. The motion shall be governed by Rule 9014.

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

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i),

(l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of:

* * * * *

(b) TWENTY-FIVE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; and (2) for filing objections and the hearing to consider confirmation of a chapter 9,

chapter 11, or chapter 13 plan.

(c) CONTENT OF NOTICE.

(1) *Proposed Use, Sale, or Lease of Property.* Subject to Rule 6004, the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property. The notice of a proposed sale or lease of personally identifiable information under § 363(b)(1) of the Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information.

* * * * *

(f) OTHER NOTICES. Except as provided in

subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of:

(1) the order for relief;

(2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under § 305;

(3) the time allowed for filing claims pursuant to Rule 3002;

(4) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004;

(5) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007;

(6) the waiver, denial, or revocation of a discharge as provided in Rule 4006;

(7) entry of an order confirming a chapter 9, 11, or 12 plan;

(8) a summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed $1,500;

(9) a notice under Rule 5008 regarding the presumption of abuse;

(10) a statement under § 704(b)(1) as to whether the debtor's case would be presumed to be an abuse under § 707(b); and

(11) the time to request a delay in the entry of the discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h). Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).

(g) ADDRESSING NOTICES.

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(2) Except as provided in § 342(f) of the Code, if a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of equity security holders.

* * * * *

(5) A creditor may treat a notice as not having been brought to the creditor's attention under § 342(g)(1) only if, prior to issuance of the notice, the creditor has filed a statement that designates the name and address of the person or organizational subdivision of the creditor responsible for receiving

notices under the Code, and that describes the procedures established by the creditor to cause such notices to be delivered to the designated person or subdivision.

* * * * *

(k) NOTICES TO UNITED STATES TRUSTEE. Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall

also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules requires the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et. seq.*

* * * * *

(p) NOTICE TO A CREDITOR WITH A FOREIGN ADDRESS.

(1) If, at the request of the United States trustee or a party in interest, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice

be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged.

(2) Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are mailed shall be given at least 30 days' notice of the time fixed for filing a proof of claim under Rule 3002(c) or Rule 3003(c).

(3) Unless the court for cause orders otherwise, the mailing address of a creditor with a foreign address shall be determined under Rule 2002(g).

(q) NOTICE OF PETITION FOR RECOGNITION OF FOREIGN PROCEEDING AND OF COURT'S INTENTION TO COMMUNICATE WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES.

(1) *Notice of Petition for Recognition.* The clerk, or some other person as the court may direct,

shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 20 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding.

(2) *Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives.* The clerk, or some other person as the court may direct, shall give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all

entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, notice by mail of the court's intention to communicate with a foreign court or foreign representative.

Rule 2003. Meeting of Creditors or Equity Security Holders

(a) DATE AND PLACE. Except as otherwise provided in § 341(e) of the Code, in a chapter 7 liquidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 40 days after the order for relief. In a chapter 12 family farmer's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no

fewer than 20 and no more than 35 days after the order for relief. In a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 50 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.

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Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case

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(b) ELECTION OF TRUSTEE.

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(3) *Report of Election and Resolution of Disputes.*

(A) Report of Undisputed Election. If no dispute arises out of the election, the United States trustee shall promptly file a report certifying the election, including the name and address of the person elected and a statement that the election is undisputed. The report shall be accompanied by a verified statement of the person elected setting forth that person's connections with the debtor, creditors, any other party in interest, their respective attorneys

and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(B) Dispute Arising Out of an Election. If a dispute arises out of an election, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. The report shall be accompanied by a verified statement by each candidate elected under each alternative presented by the dispute, setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. Not later than the date on which the report of

the disputed election is filed, the United States trustee shall mail a copy of the report and each verified statement to any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report, and to any committee appointed under § 1102 of the Code.

(c) APPROVAL OF APPOINTMENT. An order approving the appointment of a trustee or an examiner under §1104(d) of the Code shall be made on application of the United States trustee. The application shall state the name of the person appointed and, to the best of the applicant's knowledge, all the person's connections with the debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, or persons employed in the office of the United States trustee. The application shall state the

names of the parties in interest with whom the United States trustee consulted regarding the appointment. The application shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Rule 2007.2. Appointment of Patient Care Ombudsman in a Health Care Business Case

(a) ORDER TO APPOINT PATIENT CARE OMBUDSMAN. In a chapter 7, chapter 9, or chapter 11 case in which the debtor is a health care business, the court shall order the appointment of a patient care ombudsman under § 333 of the Code, unless the court, on motion of the United States trustee or a party in interest filed no later than 20 days after the commencement of the case or within another time

fixed by the court, finds that the appointment of a patient care ombudsman is not necessary under the specific circumstances of the case for the protection of patients.

(b) MOTION FOR ORDER TO APPOINT OMBUDSMAN. If the court has found that the appointment of an ombudsman is not necessary, or has terminated the appointment, the court, on motion of the United States trustee or a party in interest, may order the appointment at a later time if it finds that the appointment has become necessary to protect patients.

(c) NOTICE OF APPOINTMENT. If a patient care ombudsman is appointed under § 333, the United States trustee shall promptly file a notice of the appointment, including the name and address of the person appointed. Unless the person appointed is a

State Long-Term Care Ombudsman, the notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, patients, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office of the United States trustee.

(d) TERMINATION OF APPOINTMENT. On motion of the United States trustee or a party in interest, the court may terminate the appointment of a patient care ombudsman if the court finds that the appointment is not necessary to protect patients.

(e) MOTION. A motion under this rule shall be governed by Rule 9014. The motion shall be transmitted to the United States trustee and served on: the debtor; the trustee; any committee elected under § 705 or appointed under § 1102 of the Code or

its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and such other entities as the court may direct.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall:

(1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed;

(2) keep a record of receipts and the

disposition of money and property received;

(3) file the reports and summaries required by § 704(8) of the Code which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited;

(4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has

previously been notified of the case;

(5) in a chapter 11 reorganization case, on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and

(6) in a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar

month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than 20 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph terminates on the effective date of the plan, or conversion or dismissal of the case.

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(d) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 15 days after the date when the representative becomes aware of the subsequent information.

(e) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries

of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.

Rule 2015.1. Patient Care Ombudsman

(a) REPORTS. A patient care ombudsman, at least 10 days before making a report under § 333(b)(2) of the Code, shall give notice that the report will be made to the court, unless the court orders otherwise. The notice shall be transmitted to the United States trustee, posted conspicuously at the health care facility that is the subject of the report, and served on: the debtor; the trustee; all patients; and any

committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and such other entities as the court may direct. The notice shall state the date and time when the report will be made, the manner in which the report will be made, and, if the report is in writing, the name, address, telephone number, email address, and website, if any, of the person from whom a copy of the report may be obtained at the debtor's expense.

(b) AUTHORIZATION TO REVIEW CONFIDENTIAL PATIENT RECORDS. A motion by a patient care ombudsman under § 333(c) to review confidential patient records shall be governed by Rule

9014, served on the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, and transmitted to the United States trustee subject to applicable nonbankruptcy law relating to patient privacy. Unless the court orders otherwise, a hearing on the motion may not be commenced earlier than 15 days after service of the motion.

Rule 2015.2. Transfer of Patient in Health Care Business Case

Unless the court orders otherwise, if the debtor is a health care business, the trustee may not transfer a patient to another health care business under § 704(a)(12) of the Code unless the trustee gives at least 10 days' notice of the transfer to the patient care ombudsman, if any, the patient, and any family

member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care. The notice is subject to applicable nonbankruptcy law relating to patient privacy.

Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest

(a) REPORTING REQUIREMENT. In a chapter 11 case, the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. The reports shall be prepared as prescribed by the appropriate Official Form, and shall be based upon the most recent information reasonably available

to the trustee or debtor in possession.

(b) TIME FOR FILING; SERVICE. The first report required by this rule shall be filed no later than five days before the first date set for the meeting of creditors under § 341 of the Code. Subsequent reports shall be filed no less frequently than every six months thereafter, until the effective date of a plan or the case is dismissed or converted. Copies of the report shall be served on the United States trustee, any committee appointed under § 1102 of the Code, and any other party in interest that has filed a request therefor.

(c) PRESUMPTION OF SUBSTANTIAL OR CONTROLLING INTEREST; JUDICIAL DETERMINATION. For purposes of this rule, an entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling

interest. An entity in which the estate controls or owns less than a 20 percent interest shall be presumed not to be an entity in which the estate has a substantial or controlling interest. Upon motion, the entity, any holder of an interest therein, the United States trustee, or any other party in interest may seek to rebut either presumption, and the court shall, after notice and a hearing, determine whether the estate's interest in the entity is substantial or controlling.

(d) MODIFICATION OF REPORTING REQUIREMENT. The court may, after notice and a hearing, vary the reporting requirement established by subdivision (a) of this rule for cause, including that the trustee or debtor in possession is not able, after a good faith effort, to comply with those reporting requirements, or that the information required by subdivision (a) is publicly available.

(e) NOTICE AND PROTECTIVE ORDERS. No later than 14 days before filing the first report required by this rule, the trustee or debtor in possession shall send notice to the entity in which the estate has a substantial or controlling interest, and to all holders – known to the trustee or debtor in possession – of an interest in that entity, that the trustee or debtor in possession expects to file and serve financial information relating to the entity in accordance with this rule. The entity in which the estate has a substantial or controlling interest, or a person holding an interest in that entity, may request protection of the information under § 107 of the Code.

(f) EFFECT OF REQUEST. Unless the court orders otherwise, the pendency of a request under subdivisions (c), (d), or (e) of this rule shall not alter or stay the requirements of subdivision (a).

Rule 3002. Filing Proof of Claim or Interest

* * * * *

(c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:

(1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under § 1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return. The court may, for cause,

enlarge the time for a governmental unit to file a proof of claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim.

* * * * *

(5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.

(6) If notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days if the court finds that the

notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases

* * * * *

(c) FILING PROOF OF CLAIM.

(1) *Who May File.* Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

(2) *Who Must File.* Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) *Time for Filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6).

(4) *Effect of Filing Claim or Interest.* A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(a)(1) of the Code.

(5) *Filing by Indenture Trustee.* An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

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Rule 3016. Filing of Plan and Disclosure

Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

* * * * *

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement under § 1125 of the Code or evidence showing compliance with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated and Rule 3017.1 shall apply as if the plan is a disclosure statement.

* * * * *

(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a small business case, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other

standard forms approved by the court.

Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case

(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. In a small business case, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the hearing on confirmation.

* * * * *

Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) MODIFICATION OF PLAN BEFORE CONFIRMATION. In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 20 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification shall be filed and served on the

debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.

Rule 4002. Duties of Debtor

(a) IN GENERAL. In addition to performing other duties prescribed by the Code and rules, the debtor shall:

(1) attend and submit to an examination at the times ordered by the court;

(2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness;

(3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property

has not yet been filed pursuant to Rule 1007;

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

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

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

(1) *Personal Identification.* Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

(2) *Financial Information.* Every individual debtor shall bring to the meeting of creditors under § 341, and make available to the trustee, the following documents or copies of them, or provide a written statement that the documentation does not exist or is not in the debtor's possession:

(A) evidence of current income such as the most recent payment advice;

(B) unless the trustee or the United States trustee instructs otherwise, statements for each of the debtor's depository and investment accounts, including checking, savings, and money market accounts, mutual funds and brokerage accounts for the time period that includes the date of the filing of the petition; and

(C) documentation of monthly expenses claimed by the debtor if required by § 707(b)(2)(A) or

(B).

(3) *Tax Return.* At least 7 days before the first date set for the meeting of creditors under § 341, the debtor shall provide to the trustee a copy of the debtor's federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.

(4) *Tax Returns Provided to Creditors.* If a creditor, at least 15 days before the first date set for the meeting of creditors under § 341, requests a copy of the debtor's tax return that is to be provided to the trustee under subdivision (b)(3), the debtor, at least 7 days before the first date set for the meeting of creditors under § 341, shall provide to the requesting

creditor a copy of the return, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.

(5) *Confidentiality of Tax Information.* The debtor's obligation to provide tax returns under Rule 4002(b)(3) and (b)(4) is subject to procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts.

Rule 4003. Exemptions

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(b) OBJECTING TO A CLAIM OF EXEMPTIONS.

(1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded

or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

(2) The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney.

(3) An objection to a claim of exemption based on § 522(q) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed.

(4) A copy of any objection shall be delivered or mailed to the trustee, the debtor and the debtor's attorney, and the person filing the list and that person's attorney.

* * * * *

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

Rule 4004. Grant or Denial of Discharge

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(c) GRANT OF DISCHARGE.

(1) In a chapter 7 case, on expiration of the

time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual;

(B) a complaint objecting to the discharge has been filed;

(C) the debtor has filed a waiver under § 727(a)(10);

(D) a motion to dismiss the case under § 707 is pending;

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending;

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending;

(G) the debtor has not paid in full the

filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f);

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7);

(I) a motion to delay or postpone discharge under § 727(a)(12) is pending;

(J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;

(K) a presumption has arisen under § 524(m) that a reaffirmation agreement is an

undue hardship; or

(L) a motion is pending to delay discharge, because the debtor has not filed with the court all tax documents required to be filed under § 521(f).

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(3) If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than 30 days after the statement is filed.

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Rule 4006. Notice of No Discharge

If an order is entered: denying a discharge; revoking a discharge; approving a waiver of discharge; or, in the case of an individual debtor, closing the case without the entry of a discharge, the clerk shall promptly notify all parties in interest in the manner

provided by Rule 2002.

Rule 4007. Determination of Dischargeability of a Debt

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(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed

under this subdivision. The motion shall be filed before the time has expired.

(d) TIME FOR FILING COMPLAINT UNDER § 523(a)(6) IN A CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under § 523(a)(6) and shall give no less than 30 days' notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

* * * * *

Rule 4008. Filing of Reaffirmation Agreement;

Statement in Support of Reaffirmation Agreement

(a) FILING OF REAFFIRMATION AGREEMENT. A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code. The court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement.

(b) STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT. The debtor's statement required under § 524(k)(6)(A) of the Code shall be accompanied by a statement of the total income and expenses stated on schedules I and J. If there is a difference between the total income and expenses stated on those schedules and the statement required under § 524(k)(6)(A), the statement required by this subdivision shall include an explanation of the difference.

Rule 5001. Courts and Clerks' Offices

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(b) TRIALS AND HEARINGS; ORDERS IN CHAMBERS. All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. Except as otherwise provided in 28 U.S.C. § 152(c), all other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

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Rule 5003. Records Kept By the Clerk

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(e) REGISTER OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS AND

CERTAIN TAXING AUTHORITIES. The United States or the state or territory in which the court is located may file a statement designating its mailing address. The United States, state, territory, or local governmental unit responsible for collecting taxes within the district in which the case is pending may also file a statement designating an address for service of requests under § 505(b) of the Code, and the designation shall describe where further information concerning additional requirements for filing such requests may be found. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes the mailing addresses designated under the first sentence of this subdivision, and a separate register of the addresses designated for the service of requests under § 505(b) of the Code. The clerk is not

required to include in any single register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

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Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors

If a presumption of abuse has arisen under § 707(b) in a chapter 7 case of an individual with primarily consumer debts, the clerk shall within 10 days after the date of the filing of the petition notify creditors of the presumption of abuse in accordance with Rule 2002. If the debtor has not filed a statement indicating whether a presumption of abuse has arisen, the clerk shall within 10 days after the date of the filing of the petition notify creditors that the debtor has not filed the statement and that further notice will be given if a later filed statement indicates that a presumption of abuse has arisen. If a debtor later files a statement indicating that a presumption of abuse has arisen, the clerk shall notify creditors of the presumption of abuse as promptly as practicable.

Rule 6004. Use, Sale, or Lease of Property

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(g) SALE OF PERSONALLY IDENTIFIABLE INFORMATION.

(1) *Motion.* A motion for authority to sell or lease personally identifiable information under § 363(b)(1)(B) shall include a request for an order directing the United States trustee to appoint a consumer privacy ombudsman under § 332. Rule 9014 governs the motion which shall be served on: any committee elected under § 705 or appointed under § 1102 of the Code, or if the case is a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list of creditors filed under Rule 1007(d); and on such other entities as the court

may direct. The motion shall be transmitted to the United States trustee.

(2) *Appointment.* If a consumer privacy ombudsman is appointed under § 332, no later than 5 days before the hearing on the motion under § 363(b)(1)(B), the United States trustee shall file a notice of the appointment, including the name and address of the person appointed. The United States trustee's notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(h) STAY OF ORDER AUTHORIZING USE, SALE, OR LEASE OF PROPERTY. An order authorizing the use, sale, or lease of property other than cash

collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.

Rule 6011. Disposal of Patient Records in Health Care Business Case

(a) NOTICE BY PUBLICATION UNDER § 351(1)(A). A notice regarding the claiming or disposing of patient records under § 351(1)(A) shall not identify any patient by name or other identifying information, but shall:

(1) identify with particularity the health care facility whose patient records the trustee proposes to destroy;

(2) state the name, address, telephone number, email address, and website, if any, of a person from whom information about the patient records may be obtained;

(3) state how to claim the patient records;

and

(4) state the date by which patient records must be claimed, and that if they are not so claimed the records will be destroyed.

(b) NOTICE BY MAIL UNDER § 351(1)(B). Subject to applicable nonbankruptcy law relating to patient privacy, a notice regarding the claiming or disposing of patient records under § 351(1)(B) shall, in addition to including the information in subdivision (a), direct that a patient's family member or other representative who receives the notice inform the patient of the notice. Any notice under this subdivision shall be mailed to the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, to the Attorney

General of the State where the health care facility is located, and to any insurance company known to have provided health care insurance to the patient.

(c) PROOF OF COMPLIANCE WITH NOTICE REQUIREMENT. Unless the court orders the trustee to file proof of compliance with § 351(1)(B) under seal, the trustee shall not file, but shall maintain, the proof of compliance for a reasonable time.

(d) REPORT OF DESTRUCTION OF RECORDS. The trustee shall file, no later than 30 days after the destruction of patient records under § 351(3), a report certifying that the unclaimed records have been destroyed and explaining the method used to effect the destruction. The report shall not identify any patient by name or other identifying information.

Rule 7012. Defenses and Objections — When and How Presented — By Pleading or Motion — Motion

for Judgment on the Pleadings

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(b) APPLICABILITY OF RULE 12(b)-(i) F.R.CIV.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

Rule 7022. Interpleader

Rule 22(a) F.R.Civ.P. applies in adversary proceedings. This rule supplements – and does not limit – the joinder of parties allowed by Rule 7020.

Rule 7023.1. Derivative Actions

Rule 23.1 F.R.Civ.P. applies in adversary proceedings.

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

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(e) ELECTION TO HAVE APPEAL HEARD BY DISTRICT COURT INSTEAD OF BANKRUPTCY APPELLATE PANEL; WITHDRAWAL OF ELECTION.

(1) *Separate Writing for Election.* An election to have an appeal heard by the district court under 28 U.S.C. § 158(c)(1) may be made only by a statement of election contained in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).

(2) *Withdrawal of Election.* A request to withdraw the election may be filed only by written stipulation of all the parties to the appeal or their

attorneys of record. Upon such a stipulation, the district court may either transfer the appeal to the bankruptcy appellate panel or retain the appeal in the district court.

(f) CERTIFICATION FOR DIRECT APPEAL TO COURT OF APPEALS.

(1) *Timely Appeal Required.* A certification of a judgment, order, or decree of a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2) shall not be effective until a timely appeal has been taken in the manner required by subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002.

(2) *Court Where Certification Made and Filed.* A certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be filed in the court in which a matter is pending for purposes of 28

U.S.C. § 158(d)(2) and this rule. A matter is pending in a bankruptcy court until the docketing, in accordance with Rule 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. § 158(a)(3). A matter is pending in a district court or bankruptcy appellate panel after the docketing, in accordance with Rule 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. § 158(a)(3).

(A) Certification by Court on Request or Court's Own Initiative.

(i) Before Docketing or Grant of Leave to Appeal. Only a bankruptcy court may make a certification on request or on its own initiative while the matter is pending in the bankruptcy court.

(ii) After Docketing or Grant of Leave

to Appeal. Only the district court or bankruptcy appellate panel involved may make a certification on request of the parties or on its own initiative while the matter is pending in the district court or bankruptcy appellate panel.

(B) Certification by All Appellants and Appellees Acting Jointly. A certification by all the appellants and appellees, if any, acting jointly may be made by filing the appropriate Official Form with the clerk of the court in which the matter is pending. The certification may be accompanied by a short statement of the basis for the certification, which may include the information listed in subdivision (f)(3)(C) of this rule.

(3) *Request for Certification; Filing; Service; Contents.*

(A) A request for certification shall be filed, within the time specified by 28 U.S.C. § 158(d)(2),

with the clerk of the court in which the matter is pending.

(B) Notice of the filing of a request for certification shall be served in the manner required for service of a notice of appeal under Rule 8004.

(C) A request for certification shall include the following:

(i) the facts necessary to understand the question presented;

(ii) the question itself;

(iii) the relief sought;

(iv) the reasons why the appeal should be allowed and is authorized by statute or rule, including why a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists; and

(v) an attached copy of the judgment, order, or decree complained of and any

related opinion or memorandum.

(D) A party may file a response to a request for certification or a cross request within 10 days after the notice of the request is served, or another time fixed by the court.

(E) Rule 9014 does not govern a request, cross request, or any response. The matter shall be submitted without oral argument unless the court otherwise directs.

(F) A certification of an appeal under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties.

(4) *Certification on Court's Own Initiative.*

(A) A certification of an appeal on the court's own initiative under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties in the manner required for service of a notice of appeal

under Rule 8004. The certification shall be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(3)(C)(i)-(iv) of this rule.

(B) A party may file a supplementary short statement of the basis for certification within 10 days after the certification.

(5) *Duties of Parties After Certification.* A petition for permission to appeal in accordance with F. R. App. P. 5 shall be filed no later than 30 days after a certification has become effective as provided in subdivision (f)(1).

Rule 8003. Leave to Appeal

* * * * *

(d) REQUIREMENT OF LEAVE TO APPEAL. If leave to appeal is required by 28 U.S.C. § 158(a) and

has not earlier been granted, the authorization of a direct appeal by a court of appeals under 28 U.S.C. § 158(d)(2) shall be deemed to satisfy the requirement for leave to appeal.

Rule 9006. Time

* * * * *

(b) ENLARGEMENT.

(1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the

expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) *Enlargement Not Permitted.* The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.

(3) *Enlargement Governed By Other Rules.* The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules. In addition, the court may enlarge the time to file the statement required under Rule 1007(b)(7), and to file schedules and statements in a small business case under § 1116(3) of the Code, only to the extent and under the conditions stated in Rule 1007(c).

(c) REDUCTION.

* * * * *

(2) *Reduction Not Permitted.* The court may not reduce the time for taking action under Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, and 9033(b). In addition, the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7).

* * * * *

Rule 9009. Forms

Except as otherwise provided in Rule 3016(d), the Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may

issue additional forms for use under the Code. The forms shall be construed to be consistent with these rules and the Code.

Rule 9024. Relief from Judgment or Order

Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330.

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

January 10, 2008

MEMORANDUM

To: The Chief Justice of the United States and the Associate Justices of the Supreme Court

From: James C. Duff

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 7012, 7022, 7023.1, 8001, 8003, 9006, 9009, and 9024, and new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011 of the Federal Rules of Bankruptcy Procedure, which were approved by the Judicial Conference at its September 2007 session. The Judicial Conference recommends that these amendments and new rules be approved by the Court and transmitted to the Congress pursuant to law.

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

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:

* * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Approved for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 7012, 7022, 7023.1, 8001, 8003, 9006, 9009, and 9024; proposed new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011; proposed revisions to Official Forms 1, 3A, 3B, 4, 5, 6, 7, 9, A-I, 10, 16A, 18, 19, 21, 22A, 22B, 22C, 23, 24; and proposed new Official Forms 25A, 25B, 25C, and 26 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments and new rules (with the exception of technical amendments to Rules 7012, 7022, 7023.1, and 9024), and Official Forms were circulated to the bench and bar for comment in August 2006. The scheduled public hearings on the proposed changes were canceled because no one asked to testify.

In August 2005, the Executive Committee, on recommendation of this Committee, authorized distribution to the courts of Interim Bankruptcy Rules with the recommendation that they be adopted to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("Act"), which generally became effective on October 17, 2005 (Pub. L. No. 109-8). Most of the amendments and new rules proposed to the Bankruptcy Rules are based on the Interim Rules, which were adopted by virtually all bankruptcy courts in local rules or general orders until

final rules could be put in place to implement the Act. Based on the favorable experience of the bench and bar with the Interim Rules, the proposed amendments to the national rules use the Interim Rules language, with only slight adjustments to certain rules. A handful of additional amendments and new rules, which were not included in the Interim Rules, are also proposed to address provisions of the 2005 Act that did not require immediate implementation.

The proposed amendment to Rule 1005 (Caption of Petition) requires a debtor to disclose all names or aliases used by the debtor in the past eight rather than six years. The amended rule also requires disclosure of the last four digits of an individual debtor's taxpayer-identification number in the title of a case.

The proposed amendment to Rule 1006 (Filing Fee) directs the debtor in a chapter 7 case to use the appropriate Official Form to apply for a filing fee waiver.

The proposed amendment to Rule 1007 (Lists, Schedules, Statements, and other Documents; Time Limits) requires a debtor to file a variety of documents mandated under the Act. The amendment limits the extension of time that may be granted to a small-business debtor to file schedules and statements. The amendment also requires a debtor filing a petition to commence a case under chapter 15 to include a list of entities with whom the debtor has been engaged in litigation in the United States.

The proposed amendment to Rule 1009 (Amendments of Voluntary Petitions, Lists, Schedules, and Statements) corrects a cross-reference to the Code.

The proposed amendment to Rule 1010 (Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign Nonmain Proceeding) requires a representative in a pending foreign nonmain proceeding to serve a summons and petition on the debtor and any entity against whom the representative is seeking provisional relief.

The proposed amendment to Rule 1011 (Responsive Pleading or Motion in Involuntary and Cross-Border Cases) requires a corporation involved in a cross-border insolvency case to file a corporate disclosure ownership statement. Other provisions are amended to conform to the new proceedings governing chapter 15.

The proposed amendment to Rule 1015 (Consolidation or Joint Administration of Cases Pending in Same Court) conforms the cross-references to renumbered § 522 of the Code.

The proposed amendment to Rule 1017 (Dismissal or Conversion of Case; Suspension) permits a party in interest to move to dismiss a chapter 7 consumer-debt case as abusive, if the party states with particularity the circumstances of the alleged abuse.

The proposed amendment to Rule 1019 (Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case) preserves deadlines for motions to dismiss a case under § 707(b) upon conversion from chapter 13 to chapter 7.

The proposed amendment to Rule 1020 (Small Business Chapter 11 Reorganization Case) replaces the old rule and provides procedures to determine whether the debtor is a small business. A party objecting to the small-business designation must file objections within a limited time period.

Proposed new Rule 1021 (Health Care Business Case) provides procedures for designating a debtor as a health-care business, including procedures authorizing a party in interest to object to the designation.

The proposed amendment to Rule 2002 (Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee) requires a court promptly to provide all creditors a copy of the trustee's statement as to whether the debtor's

case will be presumed to be abusive. The amendment also requires the court to provide notice of a hearing on a petition for recognition of a foreign proceeding. The notice must be provided to a debtor and entities against whom provisional relief is sought. Other proposed rule changes implement the Act's amendments to the business provisions of the Bankruptcy Code.

The proposed amendment to Rule 2003 (Meeting of Creditors or Equity Security Holders) authorizes a court to order that a meeting of creditors need not be convened if the debtor has already solicited acceptances of a plan prior to commencement of a case.

The proposed amendment to Rule 2007.1 (Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case) requires an elected trustee to file an affidavit setting forth information regarding that person's connection with creditors and others with an interest in the case.

Proposed new Rule 2007.2 (Appointment of Patient Care Ombudsman in a Health Care Business Case) requires the appointment of a patient-care ombudsman in the first 30 days of a health-care business case unless the court finds it is not necessary for the protection of patients. The new rule also establishes procedures for a party in interest to file a motion to appoint, terminate, or object to the appointment of an ombudsman.

The proposed amendment to Rule 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status) requires a small-business chapter 11 debtor to file periodic financial and operating reports. It also requires a foreign representative to file a notice of a change in status in the foreign proceeding or in the appointment of the foreign representative.

Proposed new Rule 2015.1 (Patient Care Ombudsman) establishes notice requirements concerning reports issued by a health-care ombudsman. The rule requires that any request by the ombudsman to review patient records must be approved by a court. It also provides an

opportunity to the trustee, patient, and other interested persons to object to the ombudsman's request.

Proposed new Rule 2015.2 (Transfer of Patient in Health Care Business Case) authorizes a trustee to relocate patients when a health-care debtor business is being closed. Patients are provided an opportunity to object to the trustee's relocation determination.

Proposed new Rule 2015.3 (Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest) requires a debtor in possession or trustee to file periodic reports of the value and profitability of any entity in which the debtor has a substantial or controlling interest.

The proposed amendment to Rule 3002 (Filing Proof of Claim or Interest) provides additional time for a governmental unit to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case, which conforms to the new time period required by the Act. Under the amendment, a court may extend the time for filing a proof of claim for a creditor with a foreign address.

The proposed amendment to Rule 3003 (Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases) provides that a court may extend the time for a creditor with a foreign address to file proofs of claim in a chapter 9 or 11 case.

The proposed amendment to Rule 3016 (Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case) provides that a small-business debtor need not file a disclosure statement if the plan includes adequate information and a court finds that a separate disclosure statement is unnecessary.

The proposed amendment to Rule 3017.1 (Court Consideration of Disclosure Statement in a Small Business Case) permits a court in a small-business chapter 11 case to conditionally approve a plan if adequate information is provided.

The proposed amendment to Rule 3019 (Modification of Accepted Plan Before or After Confirmation in a Chapter 9 Municipality or Chapter 11 Reorganization Case) establishes a procedure for filing and objecting to a proposed modification of a confirmed plan in an individual debtor's chapter 11 case.

The proposed amendment to Rule 4002 (Duties of Debtor) requires a debtor to provide a government-issued picture identification and evidence of a social security number, current income, recent Federal income tax returns or tax transcripts, and financial accounts existing when the case commenced.

The proposed amendment to Rule 4003 (Exemptions) allows a trustee to object to an exemption at any time up to one year after the closing of a case if the exemption was fraudulent. The amendment also conforms the rule to § 522(q) of the Code, as revised by the Act, which limits the state homestead exemption to $138,875 if the debtor had been convicted of a felony or owed a debt arising from certain causes of action.

The proposed amendment to Rule 4004 (Grant or Denial of Discharge) requires a debtor to complete a financial management program before the court may enter a discharge, and authorizes the court to postpone a discharge to determine whether the debtor has committed a felony or owes a debt arising from certain causes of action within a particular time frame.

The proposed amendment to Rule 4006 (Notice of No Discharge) requires the clerk to provide notice to all parties in interest, including the debtor, that no discharge was entered.

The proposed amendment to Rule 4007 (Determination of Dischargeability of a Debt) provides the time limits governing the filing and notice of a complaint to determine the dischargeability of a debt under § 532(c) of the Code in a chapter 13 case.

The proposed amendment to Rule 4008 (Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement) establishes a deadline for filing a reaffirmation agreement.

The amendment also requires a debtor to file a signed statement showing total income and expenses from schedules I and J and an explanation of any discrepancies from the debtor's income and expenses at the time of the filing of the reaffirmation agreement.

The proposed amendment to Rule 5001 (Courts and Clerks' Offices) authorizes a bankruptcy judge in emergency situations to hold hearings outside the district in which the case is pending under 28 U.S.C. § 152(c).

The proposed amendment to Rule 5003 (Records Kept By the Clerk) allows government-taxing authorities to designate addresses to use for the service of a request under § 505(b)(1) of the Code.

Proposed new Rule 5008 (Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors) requires a clerk to give written notice to all creditors no later than 10 days after the filing of a petition that a presumption of abuse has arisen.

The proposed amendment to Rule 6004 (Use, Sale, or Lease of Property) requires the appointment of a consumer-privacy ombudsman if a trustee proposes to sell personally identifiable information in certain circumstances.

Proposed new Rule 6011 (Disposal of Patient Records in Health Care Business Case) requires a trustee to notify patients that their medical records will be destroyed if unclaimed for one year.

The proposed amendment to Rule 8001 (Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals) implements the provisions for direct appeals to the courts of appeals that the Act added in 2005.

The proposed amendment to Rule 8003 (Leave to Appeal) provides that a certification by the lower court or the allowance of leave to appeal by the court of appeals satisfies the requirement for leave to appeal, even if no motion for leave to appeal has been filed.

The proposed amendment to Rule 9006 (Time) provides that extensions of time for filing schedules and a statement of financial affairs by a small-business debtor cannot extend beyond the time set in § 1116(3) of the Code.

The proposed amendment to Rule 9009 (Forms) provides that a plan proponent in a small-business chapter 11 case need not use an Official Form of a plan of reorganization and disclosure statement.

The advisory committee also proposed amendments to Rules 7012, 7022, 7023.1, and 9024, which were not published for public comment because they are technical and conform to "style" amendments to the Civil Rules that are scheduled to take effect on December 1, 2007. The proposed amendments to the Bankruptcy Rules modify cross-references to the Civil Rules, which were changed during the style project.

* * * * *

Recommendation: That the Judicial Conference –

a. Approve the proposed amendments to Bankruptcy Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 7012, 7022, 7023.1, 8001, 8003, 9006, 9009, and 9024 and new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011, 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;

* * * * *

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

DAVID F. LEVI
CHAIR

PETER G. McCABE
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CRIMINAL RULES

JERRY E. SMITH
EVIDENCE RULES

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

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

DATE: **May 8, 2007**

RE: **Report of the Advisory Committee on Bankruptcy Rules**

I. INTRODUCTION

The Advisory Committee on Bankruptcy Rules met on March 29-30, 2007, at Marco Island, Florida.

* * * * *

As a result of the meeting and other subsequent action, the Advisory Committee recommends a series of action items to the Standing Committee. First, the Committee recommends that the Standing Committee approve amendments to 32 rules and seven new rules, published for comment in August 2006. The Advisory Committee received 60 comments on the published rules and forms and reviewed 38 additional comments on the Interim Rules and Forms. After considering the comments, the Committee recommends approval of 25 amended rules and four new rules as published. The Committee recommends approval of seven amended rules (Rules 1007, 2002, 3002, 3019, 4003, 5003, and 9006), and three new Rules (new Rules 2015.1, 2015.3, and 6011) as revised as a result of the comments and further study. In the Committee's view, none of the changes requires republication.

Second, the Committee recommends approval of minor technical changes to four rules that are necessary as a result of the restyled Civil Rules. We do not believe these rule changes will require publication.

* * * * *

As a result of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "2005 Act") Interim Rules were prepared by this Committee, approved by the Standing Committee, and adopted by standing order in every district in the United States. Time did not allow for publication of these Interim Rules before the October 17, 2005 effective date to the 2005 Act. The Interim Rules comprise the bulk of the package of new rules and rule amendments published in August 2006, which are now being recommended for final approval.

Our report to the Standing Committee dated May 24, 2006 (Revised June 30, 2006) included a statement as to whether each rule (ultimately published in August 2006) was previously approved as an Interim Rule, and the changes and reasons for any change to the Interim Rules. This report provides an explanation of changes being recommended to the published rules.

Similarly, the 2005 Act required amendments to, or creation of, many new Official Forms. These amendments and additions were recommended to the Judicial Conference and approved by it in August and October 2005. These Official Forms, as modified, were also published for comment in August 2006. The Committee report in the Spring of 2006 also explained the proposed changes to the Official Forms and the reasons for the proposed changes. This report outlines changes to the published Official Forms that the Committee recommends for final adoption without further publication.

In August 2006, proposed amendments to 32 Bankruptcy Rules, eight new rules, amendments to 21 Official Forms, and four new Official Forms were published for comment. All written comments were due by February 15, 2007. No party requested to testify at the public hearings scheduled for January 22, 2007, and the hearing was cancelled. However, the Committee reviewed the 60 written comments received on the published rules and forms and the 38 comments received on the Interim Rules and Forms. Copies of the comments are available on the Federal Rulemaking page of the Judiciary's website at:

http://www.uscourts.gov/rules/2006_Bankruptcy_Rules_Comments_Chart.htm and
http://www.uscourts.gov/rules/BK%20Interim%20Rules%20Forms.htm.

The Advisory Committee held numerous subcommittee telephone call meetings to discuss all the comments at great length. Since publication, I estimate a total of 20 subcommittee meetings lasting two to three hours were held to carefully analyze the comments. In addition, separate additional memorandums were prepared by the Reporter and other members of the Committee outlining the Recommendations of the various subcommittees. At the meeting of the full Advisory Committee in March 2007, the Committee carefully considered all the public comments, the recommendations of the subcommittees, and the views of the entire Advisory Committee. The Committee now provides the Standing Committee with its recommendations.

II. ACTION ITEMS

A. Proposed Amendments to Bankruptcy Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 8001, 8003, 9006, and 9009, and new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference:

The Advisory Committee recommends that the Standing Committee approve the following proposed amendments to the Bankruptcy Rules and Official Forms and submit them to the Judicial Conference.

1. *Public Comment and Hearing*

The proposed amendments were published for comment in August 2006. A public hearing on the proposed amendments was scheduled for January 22, 2007, but there were no requests to appear at the hearing. The comments are summarized below immediately following each of the rules to which the comment relates. The Advisory Committee reviewed these comments and approved the amendments to the rules either as published or with changes that are described in the Changes Made After Publication section of this report.

2. *Synopsis of Proposed Amendments*

(a) **Rule 1005 (conforming)** contains an amendment to require the disclosure of all names used by the debtor in the past eight years to implement the provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act) that extends the time between discharges from six to eight years. The rule is also amended to include an individual debtor's tax identification number among the information that must be limited to protect the debtor's privacy.

(b) **Rule 1006** is amended to implement the provisions in the Act that, for the first time on a nationwide basis, authorize the courts to waive the payment of filing fees by debtors. The amendment directs the debtor to use the Official Form for requesting a fee waiver. The amendment also permits the court to allow the payment of the filing fee in installments even if the debtor has made a payment to an attorney in connection with the case.

(c) **Rule 1007 (conforming)** is amended to reflect the expanded obligations of debtors to file a variety of documents and materials by the Act. The amendments address the filing of current monthly income statements and other forms to implement the means test imposed by the 2005 bankruptcy reform legislation. There are also changes to require debtors to file additional

materials such as payment advices and education income retirement accounts, as well as certificates for the completion of credit counseling and financial management programs mandated by the legislation. The rule is also amended to recognize the limitation on the extension of the time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added to the Bankruptcy Code by the Act in 2005, establishes a specific standard for the courts to apply in the event that the debtor in possession or the trustee seeks an extension for the filing of these forms for a period beyond 30 days after the order for relief. Finally, the rule is amended to require that any entity filing a petition for recognition to commence a case under chapter 15 of the Code file a list of entities with whom the debtor is engaged in litigation in the United States. This chapter was added to the Code by the Act. The recognition of a foreign proceeding makes § 362 of the Code operative in the case, so the amendment to the rule requires the entity filing a petition for recognition to file a list of parties to pending litigation with the debtor. These entities can then be notified prior to the imposition of the automatic stay that the petitioner has sought relief under chapter 15.

(d) **Rule 1009 (technical)** is amended to correct a cross reference to the Bankruptcy Code due to the restructuring of § 521 of the Code by the Act.

(e) **Rule 1010 (conforming)** is amended to implement the changes to the Bankruptcy Code made by the Act. It repealed § 304 of the Code and replaced it with chapter 15 governing both ancillary and cross-border cases. Under that chapter, a foreign representative commences a case by filing a petition for recognition of a pending foreign proceeding. This amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. The rule also provides that the court may direct that service be made on additional entities as appropriate.

(f) **Rule 1011 (technical)** is amended to reflect the 2005 enactment of the Act which repealed § 304 of the Code and added chapter 15 to the Code. Section 304 covered cases "ancillary to foreign proceedings," while chapter 15 of the Code governs cross-border insolvencies and introduces the concept of a petition for recognition of a foreign proceeding. The amendment implements this new terminology.

(g) **Rule 1015 (technical)** is amended to change the cross references in the Rule to conform to the renumbered subsections of the provision of the Bankruptcy Code as amended by the 2005 Act.

(h) **Rule 1017 (conforming)** is amended to implement the amendments to § 707(b) of the Code by the Act that permit parties in interest to move to dismiss the chapter 7 case of an individual whose debts are primarily consumer debts as abusive. The amendments to subdivision (e) of the rule preserve the time limits already in place for § 707 motions. The rule also requires that a motion filed under § 707(b)(3) state with particularity the circumstances that present the alleged abuse.

(i) **Rule 1019 (conforming)** is amended because the Act is likely to lead to more conversions of cases to and from chapters 7 and 13. The amendments preserve deadlines for motions to dismiss a case under § 707(b) upon conversion of a case from chapter 13 to chapter 7.

(j) **Rule 1020** is essentially a new rule that reflects the change in the definition of a small business debtor made by the Act. The former rule is deleted, and the new rule provides a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor. It also provides procedures for bringing to the court disputes regarding the proper characterization of the debtor. Because it is important to resolve such disputes early in the case, a time limit for objecting to the debtor's self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule. Subdivision (c), which relates the presence and activity of a committee of unsecured creditors, is designed to be consistent with the Code's definition of "small business debtor."

(k) **Rule 1021** is new. It is added to the rules to implement § 101(27A) of the Code, added by the Act in 2005. That section defines health care businesses, and the rule authorizes parties in interest to seek an order identifying a debtor as a health care business. The debtor, in a voluntary case and the petitioning creditors in an involuntary case, will make the health care business identification on the petition. If a party in interest disagrees with the determination by the debtor or petitioning creditors that the debtor is not a health care business, the party can move for an order designating the debtor as a health care business.

(l) **Rule 2002 (conforming and otherwise)** is amended to reflect the 2005 revisions to § 704 of the Bankruptcy Code in the Act requiring the court to provide a copy to all creditors of a statement by the United States trustee as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

The rule is also amended in several respects to implement amendments made to the business provisions of the Bankruptcy Code by the Act. Subdivision

(b) is amended to require that notice of a hearing on the approval of a plan to serve as a disclosure statement be given in a small business case in chapter 11. Subdivision (p)(1) is added to the rule to give the court flexibility to direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses now required by § 1514(d) of the Code. This portion of the rule recognizes that the court has discretion to establish procedures to determine, on its own initiative, whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest. Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court also may shorten the additional notice time if circumstances so warrant. Subdivision (p)(3) is added to the rule to provide that the court can, for cause, override a creditor's designation of a foreign mailing address.

Finally, Rule 2002 is amended to implement the provisions of chapter 15 of the Bankruptcy Code. Subdivision (q) is added to the rule to require that notice be given to the debtor and entities against whom provisional relief is sought of a hearing on a petition for recognition of a foreign proceeding. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

(m) **Rule 2003 (technical)** is amended to implement the Act's amendment to § 341(e) of the Bankruptcy Code. The amendment to the rule authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened if the debtor had solicited acceptances of a plan prior to the commencement of the case. The amended rule recognizes that a meeting of creditors may not be held in those cases.

(n) **Rule 2007.1 (conforming)** is amended to reflect the change in the manner of the election and appointment of trustees in chapter 11 cases. The 2005 amendments to the Bankruptcy Code reduce somewhat the role of the United States trustee in the appointment process, so the amendments to Rule 2007.1 limit that role and require the elected trustee to file an affidavit setting forth information regarding that person's connections with creditors and others with an interest in the case.

(o) **Rule 2007.2 (conforming)** is new. It is added to the rules to govern the appointment of a health care ombudsman in the first 30 days of all health care business cases unless the court finds that the appointment is not necessary for the protection of patients. This is a new obligation created by § 333 of the Code added by the Act in 2005. The rule recognizes this obligation and provides that any party in interest that believes that the appointment of a health care ombudsman is unnecessary in the case must file its objection to the appointment within the first twenty days of the case. That entity also must notify other interested parties that the objection has been filed. The court will then consider the objection and determine whether to order the United States trustee to make the appointment. In the absence of any timely objections, the court will enter an order directing the United States trustee to appoint the ombudsman. The rule also permits parties in interest to file motions either to appoint or terminate the appointment of these ombudsmen, and it sets forth the procedure for approving the appointment.

(p) **Rule 2015 (conforming)** is amended by inserting a new subdivision (d) to implement the 2005 enactment of § 1518 of the Code as a part of the Act. That section directs the foreign representative to make reports to the court, and the rule sets the time for the filing of those reports. Former subdivision (d) is renumbered as subdivision (e).

(q) **Rule 2015.1** is new. It is added to implement § 333(b) and (c) added to the Code in 2005 by the Act. The rule requires ten days notice of reports to be made by the health care ombudsman and sets out the entities to whom the notice must be given. The rule permits the notice to relate to a single report or to periodic reports to be given throughout the course of the case. That is, the notice may serve as notice of all reports to be given by the ombudsman at specified intervals during the case. Interested parties will then be able to review the written reports or attend the hearings at which oral reports might be given. The Rule also implements § 333(c)(1) added to the Code in 2005 by the Act. The statute requires court approval of the ombudsman's review of the patient records with the imposition of appropriate restrictions to protect the confidentiality of the records. The rule requires the ombudsman to notify the United States trustee, the patient, and any family member or contact person whose name and address have been given to the trustee or the debtor that the ombudsman is seeking access to otherwise confidential patient records. This provides an opportunity for the patient and United States trustee to appear and be heard on the matter and should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality. A notice given under the rule is expressly made subject to applicable nonbankruptcy laws governing patient privacy.

(r) **Rule 2015.2 (conforming)** is new. It is added to implement § 704(a)(12) which was added to the Code in 2005 by the Act. That section authorizes the trustee to relocate patients when a health care business debtor's facility is being closed. The statute permits the trustee to take this action without the need for any order from the court, but the notice required by this rule will enable patients who contend that the trustee's actions violate § 704(a)(12) to have those issues resolved. A notice given under the rule is expressly made subject to applicable nonbankruptcy laws governing patient privacy.

(s) **Rule 2015.3** is new. It implements § 419 of the 2005 Act by requiring the filing of periodic reports of the value and profitability of any entity in which the debtor has a substantial or controlling interest. Reports are to be made on the appropriate Official Form. While § 419 of the 2005 Act places the obligation to report upon the "debtor," the rule extends the obligation to include cases in which a trustee has been appointed. The rule also establishes procedures for the determination of the applicability of the rule to specific debtors. Under the rule, the court can order that the reports not be filed in appropriate circumstances, such as when the information that would be included in these reports is already available to interested parties.

(t) **Rule 3002 (conforming and otherwise)** is amended to conform to changes in the Code made by the Act. Under § 502(b)(9), governmental units asserting claims based on tax returns filed under § 1308 during a chapter 13 case have a different time period for filing proofs of those claims. Paragraph (c)(1) is amended to conform to § 502(b)(9).

The rule is also amended to implement § 1514(d) which was added to the Bankruptcy Code by the Act. Subdivision (c)(6) gives the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim.

(u) **Rule 3003 (technical)** is amended to implement § 1514(d), which was added to the Code by the Act in 2005, by making the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases.

(v) **Rule 3016** is amended to recognize that, in 2005, the Act added §1125(f)(1) to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1

and is subject to all other rules applicable to disclosure statements in small business cases.

(w) **Rule 3017.1 (technical)** is amended to implement the Act's amendment to the Bankruptcy Code that permits the court in a small business chapter 11 case to conditionally approve a plan intended to provide adequate information. The plan is then treated as a disclosure statement under this rule.

(x) **Rule 3019 (conforming)** is amended because the Act added to the Bankruptcy Code a provision for the modification of plans filed by individual debtors in chapter 11 cases. The rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.

(y) **Rule 4002** is amended to implement the provisions of the Act that expand the obligation of debtors to provide additional evidence of personal identity, current income, and recent Federal income tax returns or tax transcripts. Amendments to the rule had been published for comment in August 2004, and this amendment carries forward from that proposed amendment the debtor's obligation to provide evidence of financial accounts existing at the time of the commencement of the case.

(z) **Rule 4003 (conforming)** is amended to reflect the Act's addition of § 522(q) to the Bankruptcy Code. Section 522(q) imposes a $125,000 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Bankruptcy Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider issues relating to § 522 late in the case, and thus the 30-day period for objections would not be appropriate for this provision. Thus, a new subdivision (b)(2) is added to provide a separate time limit for this provision.

(aa) **Rule 4004 (conforming)** is amended to implement several provisions added to the Bankruptcy Code by the Act. The amendments address the postponement of the court's entry of a discharge pending the debtor's completion of a financial management program as well as the need to postpone the discharge to consider whether the debtor has committed a felony or owes a debt arising from certain causes of action within a particular time frame.

(bb) **Rule 4006 (conforming)** is amended to reflect the Act's revision of the Bankruptcy Code that requires individual debtors to complete a course in personal financial management as a condition to the entry of a discharge. If

the debtor fails to complete the course, no discharge will be entered, but the case may be closed. The amended rule provides notice to parties in interest, including the debtor, that no discharge was entered.

(cc) **Rule 4007 (conforming)** is amended because the Act expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c). Subdivision (d) is amended to establish a deadline for filing a complaint in a chapter 13 case only for § 523(a)(6), rather than for all of the categories of claims under § 523(c).

(dd) **Rule 4008 (conforming)** is amended to reflect the Act's addition of §§ 524(k)(6)(A) and 524(m) to the Bankruptcy Code. The provisions require that a debtor file a signed statement in support of a reaffirmation, and authorize a court to review the agreements if, based on the assertions on the statement, the agreement is presumed to be an undue hardship. The rule revision requires that an accompanying statement show the total income and expense figures from schedules I and J and an explanation of any discrepancies. This will allow the court to evaluate the reaffirmation for undue hardship as § 524(m) requires.

(ee) **Rule 5001** is amended to permit bankruptcy judges to hold hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the 2005 amendment to 28 U.S.C. § 152(c).

(ff) **Rule 5003 (technical)** is amended to implement the addition of § 505(b)(1) to the Code by the Act in 2005. That section allows taxing authorities to designate addresses to use for the service of a request under that subsection.

(gg) **Rule 5008** is new. The 2005 revisions to § 342 of the Bankruptcy Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, this rule requires that the clerk send a second notice.

(hh) **Rule 5012 (conforming)** is withdrawn. The Advisory Committee concluded that the proposed rule should be studied further prior to its adoption. The matter has been referred back to the Subcommittee on Technology and Cross Border Insolvency.

(ii) **Rule 6004 (conforming)** is amended to implement sections 332 and 363(b)(1)(B), which the Act added to the Code in 2005. Those sections require the appointment of a consumer privacy ombudsman in certain circumstances when a debtor proposes to sell personally identifiable information.

(jj) **Rule 6011** is new. It is added to implement § 351(1) which was added to the Code in 2005 by the Act. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The statute also requires that individualized notice be sent to each patient and every family member and other contact person to whom the debtor is providing information about the patient's health. Subdivisions (a) and (b) establish minimum requirements for notices to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (c) directs the trustee to maintain proof of compliance with § 351(1)(B), but it prohibits filing the proof of compliance unless the court orders the trustee to file it under seal because the proof of compliance may contain patient names that should or must remain confidential. Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. Again, notices under this rule are expressly made subject to applicable nonbankruptcy laws governing patient privacy.

(kk) **Rule 8001** is amended to implement the direct appeal provisions that the Act added in 2005. The Act amended 28 U.S.C. § 158 to authorize appeals directly to the courts of appeals upon certification either by the bankruptcy or district court or the bankruptcy appellate panel. Certification is also available to the parties either on request to the court, or if all of the parties agree. The rule also provides that review by the court of appeals, which is at its discretion, requires that a party file a timely notice of appeal.

(ll) **Rule 8003** is amended to implement the direct appeal provisions that the Act added in 2005. It provides that a certification by the lower court or the allowance of leave to appeal by the court of appeals is deemed to satisfy the

requirement for leave to appeal even if no motion for leave to appeal has been filed.

(mm) **Rule 9006 (technical)** is amended to recognize that extensions of time for filing schedules and a statement of financial affairs by small business debtors cannot be extended beyond the time set in § 1116(3) of the Code as added by the Act in 2005. This amendment operates in tandem with the amendment to Rule 1007(c) to recognize this restriction on expanding the time to file these documents in small business cases. The rule also is amended to limit the enlargement and reduction of the time to file a reaffirmation agreement.

(nn) **Rule 9009 (technical)** is amended to provide that a plan proponent in a small business chapter 11 case need not use an Official Form of a plan of reorganization and disclosure statement. Absent the amendment, the Official Form would have to be used, and the 2005 Act anticipates the use of both an Official Form and a form that is adopted by local courts.

3. *Text of Proposed Amendments to Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 8001, 8003, 9006, and 9009, and new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011.*

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1005. Caption of Petition

The caption of a petition commencing a case under the Code shall contain the name of the court, the title of the case, and the docket number. The title of the case shall include the following information about the debtor: name, employer identification number, last four digits of the social-security number or individual debtor's taxpayer-identification number, any other federal ~~tax~~ taxpayer-identification number, and all other names used within ~~six~~ eight years before filing the petition. If the petition is not filed by the debtor, it shall include all names used by the debtor which are known to the petitioners.

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

COMMITTEE NOTE

The rule is amended to require the disclosure of all names used by the debtor in the past eight years. Section 727(a)(8) was amended in 2005 to extend the time between chapter 7 discharges from six to eight years, and the rule is amended to implement that change. The rule also is amended to require the disclosure of the last four digits of an individual debtor's taxpayer-identification number. This truncation of the number applies only to individual debtors. This is consistent with the requirements of Rule 9037.

Changes Made After Publication:

No changes were made after publication.

Rule 1006. Filing Fee

(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the filing fee except as provided in subdivisions (b) and (c) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C.

§ 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) *Application ~~for Permission~~ to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments. ~~The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.~~

* * * * *

(3) *Postponement of Attorney's Fees.* ~~The filing~~ ~~fee~~ All installments of the filing fee must be paid in full

before the debtor or chapter 13 trustee may make further payments ~~pay an~~ to an attorney or any other person who renders services to the debtor in connection with the case.

(c) WAIVER OF FILING FEE. A voluntary chapter 7 petition filed by an individual shall be accepted for filing if accompanied by the debtor's application requesting a waiver under 28 U.S.C. § 1930(f), prepared as prescribed by the appropriate Official Form.

COMMITTEE NOTE

Subdivision (a) is amended to include a reference to new subdivision (c), which deals with fee waivers under 28 U.S.C. § 1930(f), which was added in 2005.

Subdivision (b)(1) is amended to delete the sentence requiring a disclosure that the debtor has not paid an attorney or other person in connection with the case. Inability to pay the filing fee in installments is one of the requirements for a fee waiver under the 2005 revisions to 28 U.S.C. § 1930(f). If the attorney payment prohibition were retained, payment of an attorney's fee would render many debtors ineligible for installment payments and thus enhance their eligibility for the fee waiver. The deletion of this prohibition

from the rule, which was not statutorily required, ensures that debtors who have the financial ability to pay the fee in installments will do so rather than request a waiver.

Subdivision (b)(3) is amended in conformance with the changes to subdivision (b)(1) to reflect the 2005 amendments. The change is meant to clarify that subdivision (b)(3) refers to payments made after the debtor has filed the bankruptcy case and after the debtor has received permission to pay the fee in installments. Otherwise, the subdivision may conflict with the intent and effect of the amendments to subdivision (b)(1).

Changes Made After Publication:

No changes were made after publication.

Rule 1007. Lists, Schedules, ~~and~~ Statements, and Other Documents; Time Limits

(a) CORPORATE OWNERSHIP STATEMENT, LIST OF CREDITORS AND EQUITY SECURITY HOLDERS, AND ~~CORPORATE OWNERSHIP STATEMENT~~ OTHER LISTS.

* * * * *

(4) *Chapter 15 Case.* In addition to the documents required under § 1515 of the Code, a foreign representative filing a petition for recognition under chapter 15 shall file with the petition: (A) a corporate ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under § 1519 of the Code.

~~(4)~~ (5) *Extension of Time.* Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to the United States trustee and to any trustee, committee elected

pursuant to under § 705 or appointed pursuant to under § 1102 of the Code, or other party as the court may direct.

(b) SCHEDULES, AND STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

(1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file the following schedules, statements, and other documents, prepared as prescribed by the appropriate Official Forms, if any:

(A) schedules of assets and liabilities; ;

(B) a schedule of current income and expenditures;;

(C) a schedule of executory contracts and unexpired leases; and;

(D) a statement of financial affairs, prepared as prescribed by the appropriate Official Forms;

(E) copies of all payment advices or other evidence of payment, if any, received by the debtor from an employer within 60 days before the filing of the petition, with redaction of all but the last four digits of the debtor's social-security number or individual taxpayer-identification number; and

(F) a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Code.

(2) An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(a) ~~521(2)~~ of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be served on the trustee and the creditors named in the statement on or before the filing of the statement.

(3) Unless the United States trustee has determined that the credit counseling requirement of § 109(h) does not apply in the district, an individual debtor must file a statement of compliance with the credit counseling requirement, prepared as prescribed by the appropriate Official Form which must include one of the following:

(A) an attached certificate and debt repayment plan, if any, required by § 521(b);

(B) a statement that the debtor has received the credit counseling briefing required by § 109(h)(1) but does not have the certificate required by § 521(b);

(C) a certification under § 109(h)(3); or

(D) a request for a determination by the court under § 109(h)(4).

(4) Unless § 707(b)(2)(D) applies, an individual debtor in a chapter 7 case shall file a statement of current

monthly income prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, the information, including calculations, required by § 707(b), prepared as prescribed by the appropriate Official Form.

(5) An individual debtor in a chapter 11 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form.

(6) A debtor in a chapter 13 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, a calculation of disposable income made in accordance with § 1325(b)(3), prepared as prescribed by the appropriate Official Form.

(7) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of a course concerning personal financial management, prepared as prescribed by the appropriate Official Form. An individual debtor shall file the statement in a chapter 11 case in which § 1141(d)(3) applies.

(8) If an individual debtor in a chapter 11, 12, or 13 case has claimed an exemption under § 522(b)(3)(A) in property of the kind described in § 522(p)(1) with a value in excess of the amount set out in § 522(q)(1), the debtor shall file a statement as to whether there is any proceeding pending in which the debtor may be found guilty of a felony of a kind described in § 522(q)(1)(A) or found liable for a debt of the kind described in § 522(q)(1)(B).

(c) TIME LIMITS. In a voluntary case, the schedules, ~~and~~ statements, and other documents required by subdivision

(b)(1), (4), (5), and (6) ~~other than the statement of intention,~~ shall be filed with the petition or within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h) of this rule. In an involuntary case, the list in subdivision (a)(2), and the schedules, ~~and~~ statements, and other documents required by subdivision (b)(1) ~~other than the statement of intention,~~ shall be filed by the debtor within 15 days of the entry of the order for relief. In a voluntary case, the documents required by paragraphs (A), (C), and (D) of subdivision (b)(3) shall be filed with the petition. Unless the court orders otherwise, a debtor who has filed a statement under subdivision (b)(3)(B), shall file the documents required by subdivision (b)(3)(A) within 15 days of the order for relief. In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7) within 45 days after the first date set for the meeting of creditors under § 341 of the Code, and in a

chapter 11 or 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7). The debtor shall file the statement required by subdivision (b)(8) no earlier than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the Code. Lists, schedules, ~~and~~ statements, and other documents filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Except as provided in § 1116(3), any ~~Any~~ extension of time ~~for the filing of the~~ to file schedules, ~~and~~ statements, and other documents required under this rule may be granted only on motion for cause

shown and on notice to the United States trustee, ~~and to~~ any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

* * * * *

COMMITTEE NOTE

The title of this rule is expanded to refer to "documents" in conformity with the 2005 amendments to § 521 and related provisions of the Bankruptcy Code that include a wider range of documentary requirements.

Subdivision (a) is amended to require that any foreign representative filing a petition for recognition to commence a case under chapter 15, which was added to the Code in 2005, file a list of entities with whom the debtor is engaged in litigation in the United States. The foreign representative filing the petition for recognition must also list any entities against whom provisional relief is being sought as well as all persons or bodies authorized to administer foreign proceedings of the debtor. This should ensure that entities most interested in the case, or their representatives, will receive notice of the petition under Rule 2002(q).

Subdivision (a)(4) is amended to require the foreign representative who files a petition for recognition under chapter 15 to file the documents described in § 1515 of the Code as well as a corporate ownership statement. The subdivision is also amended to identify the foreign representative in language that more closely follows the text of the Code. Former subdivision (a)(4) is renumbered as subdivision (a)(5) and stylistic changes were made to the subdivision.

Subdivision (b)(1) addresses schedules, statements, and other documents that the debtor must file unless the court orders otherwise and other than in a case under chapter 9. This subdivision is amended to include documentary requirements added by the 2005 amendments to § 521 that apply to the same group of debtors and have the same time limits as the existing requirements of (b)(1). Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, the payment advices should be redacted before they are filed.

Subdivision (b)(2) is amended to conform to the renumbering of the subsections of § 521.

Subdivisions (b)(3) through (b)(8) are new and implement the 2005 amendments to the Code. Subdivision (b)(3) provides for the filing of a document relating to the credit counseling requirement provided by the 2005 amendments to § 109 in the context of an Official Form that warns the debtor of the consequences of failing to comply with the credit counseling requirement.

Subdivision (b)(4) addresses the filing of information about current monthly income, as defined in § 101, for certain chapter 7

debtors and, if required, additional calculations of expenses required by the 2005 amendments to § 707(b).

Subdivision (b)(5) addresses the filing of information about current monthly income, as defined in § 101, for individual chapter 11 debtors. The 2005 amendments to § 1129(a)(15) condition plan confirmation for individual debtors on the commitment of disposable income, as defined in § 1325(b)(2), which is based on current monthly income.

Subdivision (b)(6) addresses the filing of information about current monthly income, as defined in § 101, for chapter 13 debtors and, if required, additional calculations of expenses. These changes are necessary because the 2005 amendments to § 1325 require that the determination of disposable income begin with current monthly income.

Subdivision (b)(7) reflects the 2005 amendments to §§ 727 and 1328 of the Code that condition the receipt of a discharge on the completion of a personal financial management course, with certain exceptions. Certain individual chapter 11 debtors may also be required to complete a personal financial management course under § 727(a)(11) as incorporated by § 1141(d)(3)(C). To evidence compliance with that requirement, the subdivision requires the debtor to file the appropriate Official Form certifying that the debtor has completed the personal financial management course.

Subdivision (b)(8) requires an individual debtor in a case under chapter 11, 12, or 13 to file a statement that there are no reasonable grounds to believe that the restrictions on a homestead exemption as set out in § 522(q) of the Code are applicable. Sections

1141(d)(5)(C), 1228(f), and 1328(h) each provide that the court shall not enter a discharge order unless it finds that there is no reasonable cause to believe that § 522(q) applies. Requiring the debtor to submit a statement to that effect in cases under chapters 11, 12, and 13 in which an exemption is claimed in excess of the amount allowed under § 522(q)(1) provides the court with a basis to conclude, in the absence of any contrary information, that § 522(q) does not apply. Creditors receive notice under Rule 2002(f)(11) of the time to request postponement of the entry of the discharge to permit an opportunity to challenge the debtor's assertions in the Rule 1007(b)(8) statement in appropriate cases.

Subdivision (c) is amended to include time limits for the filing requirements added to subdivision (b) due to the 2005 amendments to the Code, and to make conforming amendments. Separate time limits are provided for the documentation of credit counseling and for the statement of the completion of the financial management course. While most documents relating to credit counseling must be filed with the voluntary petition, the credit counseling certificate and debt repayment plan can be filed within 15 days of the filing of a voluntary petition if the debtor files a statement under subdivision (b)(3)(B) with the petition. Sections 727(a)(11), 1141(d)(3), and 1328(g) of the Code require individual debtors to complete a personal financial management course prior to the entry of a discharge. The amendment allows the court to enlarge the deadline for the debtor to file the statement of completion. Because no party is harmed by the enlargement, no specific restriction is placed on the court's discretion to enlarge the deadline, even after its expiration.

Subdivision (c) of the rule is also amended to recognize the limitation on the extension of time to file schedules and statements

when the debtor is a small business debtor. Section 1116(3), added to the Code in 2005, establishes a specific standard for courts to apply in the event that the debtor in possession or the trustee seeks an extension for filing these forms for a period beyond 30 days after the order for relief.

Changes Made After Publication:

Subdivision (a)(4) was amended to insert the requirement that the foreign representative who files the chapter 15 petition must file the corporate ownership statement. Subdivision (b)(4) was amended to provide that all individual debtors rather than just those whose debts are primarily consumer debts must file the statement of current monthly income. Subdivisions (b)(7) and (c) were amended to make the obligation to file a statement of the completion of a personal financial management course applicable to certain individual chapter 11 debtors as well as to individual debtors in chapters 7 and 13. Subdivision (c) is also amended to provide the court with broad discretion to enlarge the time to file the statement of completion of a personal financial management course. The Committee Note was amended to explain these changes.

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

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(b) STATEMENT OF INTENTION. The statement of intention may be amended by the debtor at any time before the expiration of the period provided in § 521(a) ~~521(2)(B)~~ of the Code. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby.

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COMMITTEE NOTE

Subdivision (b) is amended to conform to the 2005 amendments to § 521 of the Code.

Changes Made After Publication:

No changes were made after publication.

Rule 1010. Service of Involuntary Petition and Summons; Petition ~~Commencing Ancillary Case~~ For Recognition of a Foreign Nonmain Proceeding

(a) SERVICE OF INVOLUNTARY PETITION AND SUMMONS; SERVICE OF PETITION FOR

20 FEDERAL RULES OF BANKRUPTCY PROCEDURE

RECOGNITION OF FOREIGN NONMAIN PROCEEDING.

On the filing of an involuntary petition or a petition ~~commencing a case ancillary to~~ for recognition of a foreign nonmain proceeding, the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. When a petition ~~commencing an ancillary case~~ for recognition of a foreign nonmain proceeding is filed, service shall be made on the ~~parties against whom relief is sought pursuant to § 304(b)~~ debtor, any entity against whom provisional relief is sought under § 1519 of the Code, and on any other ~~parties~~ party as the court may direct. The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known

address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(*l*) F.R.Civ.P. apply when service is made or attempted under this rule.

(b) CORPORATE OWNERSHIP STATEMENT. Each petitioner that is a corporation shall file with the involuntary petition a corporate ownership statement containing the information described in Rule 7007.1.

COMMITTEE NOTE

This rule is amended to implement the 2005 amendments to the Code, which repealed § 304 and replaced it with chapter 15 governing ancillary and other cross-border cases. Under chapter 15, a foreign representative commences a case by filing a petition for recognition of a pending foreign nonmain proceeding. The amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. Until the court enters a recognition order under § 1517, no stay is in effect unless the court enters some form of provisional relief under § 1519. Thus, only those entities against whom specific provisional relief is sought need to be served. The

court may, however, direct that service be made on additional entities as appropriate.

This rule does not apply to a petition for recognition of a foreign main proceeding.

The rule is also amended by renumbering the prior rule as subdivision (a) and adding a new subdivision (b) requiring any corporate creditor that files or joins an involuntary petition to file a corporate ownership statement.

Changes Made After Publication:

No changes were made after publication.

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

(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition, or a party in interest to a petition ~~commencing a case ancillary to a~~ for recognition of a foreign proceeding, may contest the petition. In the case of a petition against a partnership under Rule 1004, a

nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

* * * * *

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

COMMITTEE NOTE

The rule is amended to reflect the 2005 amendments to the Code, which repealed § 304 and added chapter 15. Section 304 covered cases ancillary to foreign proceedings, while chapter 15 governs ancillary and other cross-border cases and introduces the concept of a petition for recognition of a foreign proceeding.

The rule is also amended in tandem with the amendment to Rule 1010 to require the parties responding to an involuntary petition and a petition for recognition of a foreign proceeding to file corporate ownership statements to assist the court in determining whether recusal is necessary.

Changes Made After Publication:

No changes were made after publication.

Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court

* * * * *

(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the

court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of a husband and wife shall, if one spouse has elected the exemptions under § 522(b) ~~(1)~~ (2) of the Code and the other has elected the exemptions under § 522 (b)~~(2)~~ (3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)~~(1)~~ (2).

* * * * *

COMMITTEE NOTE

The rule is amended to conform to the change in the numbering of § 522(b) of the Code that was made as a part of the 2005 amendments. Former subsections (b)(1) and (b)(2) of § 522

were renumbered as subsections (b)(2) and (b)(3), respectively. The rule is amended to make the parallel change.

Changes Made After Publication:

No changes were made after publication.

Rule 1017. Dismissal or Conversion of Case; Suspension

* * * * *

(e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S CHAPTER 7 CASE, OR CONVERSION TO A CASE UNDER CHAPTER 11 or 13, FOR ~~SUBSTANTIAL~~ ABUSE. The court may dismiss or, with the debtor's consent, convert an individual debtor's case for ~~substantial~~ abuse under § 707(b) only on motion ~~by the United States trustee or on the court's own motion~~ and after a hearing on notice to the debtor, the trustee, the United States trustee, and any other ~~entities~~ entity as the court directs.

(1) Except as otherwise provided in § 704(b)(2), a ~~A~~ motion to dismiss a case for ~~substantial~~ abuse under § 707(b) or (c) may be filed ~~by the United States trustee~~ only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed ~~by the United States trustee~~ before the time has expired, the court for cause extends the time for filing the motion to dismiss. The ~~United States trustee~~ party filing the motion shall set forth in the motion all matters to be considered ~~submitted to the court for its consideration~~ at the hearing. In addition, a motion to dismiss under § 707(b)(1) and (3) shall state with particularity the circumstances alleged to constitute abuse.

* * * * *

COMMITTEE NOTE

Subdivision (e) is amended to implement the 2005 amendments to § 707 of the Code. These statutory amendments permit conversion of a chapter 7 case to a case under chapter 11 or

13, change the basis for dismissal or conversion from "substantial abuse" to "abuse," authorize parties other than the United States trustee to bring motions under § 707(b) under certain circumstances, and add § 707(c) to create an explicit ground for dismissal based on the request of a victim of a crime of violence or drug trafficking. The conforming amendments to subdivision (e) preserve the time limits already in place for § 707(b) motions, except to the extent that § 704(b)(2) sets the deadline for the United States trustee to act. In contrast to the grounds for a motion to dismiss under § 707(b)(2), which are quite specific, the grounds under § 707(b)(1) and (3) are very general. Therefore, to enable the debtor to respond, subdivision (e) requires that motions to dismiss under § 707(b)(1) and (3) state with particularity the circumstances alleged to constitute abuse.

Changes Made After Publication:

No changes were made after publication.

Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case

* * * * *

(2) *New Filing Periods.* A new time period for filing ~~claims;~~ a motion under § 707(b) or (c), a claim, a

complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence under ~~pursuant to~~ Rules 1017, 3002, 4004, or 4007, ~~provided that~~ but a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing ~~claims;~~ a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case.

* * * * *

COMMITTEE NOTE

Subdivision (2) is amended to include a new filing period for motions under § 707(b) and (c) of the Code when a case is converted to chapter 7. The establishment of a deadline for filing such motions is not intended to express a position as to whether such motions are permitted under the Code.

Changes Made After Publication:

The Committee Note was amended by adding the second sentence to the Note stating explicitly that the rule was not intended to take a position on whether motions to dismiss a case under § 707(b) and (c) are proper in a case that is converted from another chapter.

Rule 1020. ~~Election to be Considered a Small Business in a Chapter 11 Reorganization Case~~ Small Business Chapter 11 Reorganization Case

~~In a chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election not later than 60 days after the date of the order for relief.~~

(a) SMALL BUSINESS DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor. In an involuntary chapter 11 case, the debtor shall file within 15 days after entry of the order for relief a statement as to

whether the debtor is a small business debtor. Except as provided in subdivision (c), the status of the case as a small business case shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.

(b) OBJECTING TO DESIGNATION. Except as provided in subdivision (c), the United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.

(c) APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS. If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case shall proceed as a small business case only if, and from the

time when, the court enters an order determining that the committee has not been sufficiently active and representative to provide effective oversight of the debtor and that the debtor satisfies all the other requirements for being a small business. A request for a determination under this subdivision may be filed by the United States trustee or a party in interest only within a reasonable time after the failure of the committee to be sufficiently active and representative. The debtor may file a request for a determination at any time as to whether the committee has been sufficiently active and representative.

(d) PROCEDURE FOR OBJECTION OR DETERMINATION. Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; any committee appointed under § 1102 or its authorized agent, or, if no committee of

unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and any other entity as the court directs.

COMMITTEE NOTE

Under the Code, as amended in 2005, there are no longer any provisions permitting or requiring a small business debtor to elect to be treated as a small business. Therefore, the election provisions in the rule are eliminated.

The 2005 amendments to the Code include several provisions relating to small business cases under chapter 11. Section 101 includes definitions of "small business debtor" and "small business case." The purpose of the new language in this rule is to provide a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor, and to provide procedures for resolving disputes regarding the proper characterization of the debtor. Because it is important to resolve such disputes early in the case, a time limit for objecting to the debtor's self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule.

An important factor in determining whether the debtor is a small business debtor is whether the United States trustee has appointed a committee of unsecured creditors under § 1102, and whether such a committee is sufficiently active and representative. Subdivision (c), relating to the appointment and activity of a

committee of unsecured creditors, is designed to be consistent with the Code's definition of "small business debtor."

Changes Made After Publication:

No changes were made after publication.

Rule 1021. Health Care Business Case

(a) HEALTH CARE BUSINESS DESIGNATION. Unless the court orders otherwise, if a petition in a case under chapter 7, chapter 9, or chapter 11 states that the debtor is a health care business, the case shall proceed as a case in which the debtor is a health care business.

(b) MOTION. The United States trustee or a party in interest may file a motion to determine whether the debtor is a health care business. The motion shall be transmitted to the United States trustee and served on: the debtor; the trustee; any committee elected under § 705 or appointed under § 1102

of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and any other entity as the court directs. The motion shall be governed by Rule 9014.

COMMITTEE NOTE

Section 101(27A) of the Code, added by the 2005 amendments, defines a health care business. This rule provides procedures for designating the debtor as a health care business. The debtor in a voluntary case, or petitioning creditors in an involuntary case, make that designation by checking the appropriate box on the petition. The rule also provides procedures for resolving disputes regarding the status of the debtor as a health care business.

Changes Made After Publication:

No changes were made after publication.

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other

Cross-Border Cases, United States, and United States Trustee

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), ~~and~~ (*l*), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of:

* * * * *

(b) TWENTY-FIVE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of ~~(1)~~ the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to

make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; and (2) ~~the time fixed~~ for filing objections and the hearing to consider confirmation of a chapter 9, chapter 11, or chapter 13 plan.

(c) CONTENT OF NOTICE.

(1) *Proposed Use, Sale, or Lease of Property.* Subject to Rule 6004, the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property. The notice of a proposed sale or lease of personally identifiable information under § 363(b)(1) of the

Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information.

* * * * *

(f) OTHER NOTICES. Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of:

(1) the order for relief;

(2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under § 305;

(3) the time allowed for filing claims pursuant to Rule 3002;

(4) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004;

(5) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007;

(6) the waiver, denial, or revocation of a discharge as provided in Rule 4006;

(7) entry of an order confirming a chapter 9, 11, or 12 plan; ~~and~~

(8) a summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed $1,500;

(9) a notice under Rule 5008 regarding the presumption of abuse;

(10) a statement under § 704(b)(1) as to whether the debtor's case would be presumed to be an abuse under § 707(b); and

(11) the time to request a delay in the entry of the discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h).

Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).

(g) ADDRESSING NOTICES.

* * * * *

(2) Except as provided in § 342(f) of the Code, if ~~If~~ a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of equity security holders.

* * * * *

(5) A creditor may treat a notice as not having been brought to the creditor's attention under § 342(g)(1) only if, prior to issuance of the notice, the creditor has filed a statement that designates the name and address of the person or organizational subdivision of the creditor responsible for receiving notices under the Code, and that describes the procedures established by the creditor to cause such notices to be delivered to the designated person or subdivision.

* * * * *

(k) NOTICES TO UNITED STATES TRUSTEE. Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), ~~and~~ (f)(8), and (q) of this rule and notice of hearings on

all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules requires the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et. seq.*

* * * * *

(p) NOTICE TO A CREDITOR WITH A FOREIGN ADDRESS.

(1) If, at the request of the United States trustee or a party in interest, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules

would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged.

(2) Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are mailed shall be given at least 30 days' notice of the time fixed for filing a proof of claim under Rule 3002(c) or Rule 3003(c).

(3) Unless the court for cause orders otherwise, the mailing address of a creditor with a foreign address shall be determined under Rule 2002(g).

(q) NOTICE OF PETITION FOR RECOGNITION OF FOREIGN PROCEEDING AND OF COURT'S INTENTION TO COMMUNICATE WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES.

(1) *Notice of Petition for Recognition.* The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 20 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding.

(2) *Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives.* The clerk, or some other person as the court may direct, shall give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, notice by mail of the court's intention to communicate with a foreign court or foreign representative.

COMMITTEE NOTE

Subdivision (b) is amended to provide for 25 days' notice of the time for the court to make a final determination whether the plan in a small business case can serve as a disclosure statement. Conditional approval of a disclosure statement in a small business case is governed by Rule 3017.1 and does not require 25 days' notice. The court may consider this matter in a hearing combined with the confirmation hearing in a small business case.

Because of the requirements of Rule 6004(g), subdivision (c)(1) is amended to require that a trustee leasing or selling personally identifiable information under § 363(b)(1)(A) or (B) of the Code, as amended in 2005, include in the notice of the lease or sale transaction a statement as to whether the lease or sale is consistent with a policy prohibiting the transfer of the information.

Subdivisions (f)(9) and (10) are new. They reflect the 2005 amendments to §§ 342(d) and 704(b) of the Code. Section 342(d) requires the clerk to give notice to creditors shortly after the commencement of the case as to whether a presumption of abuse exists. Subdivision (f)(9) adds this notice to the list of notices that the clerk must give. Subdivision (f)(10) implements the amendment to § 704(b), which requires the court to provide a copy to all creditors of a statement by the United States trustee or bankruptcy administrator as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

Subdivision (f)(11) is also added to provide notice to creditors of the debtor's filing of a statement in a chapter 11, 12, or 13 case that there is no reasonable cause to believe that § 522(q) applies in the case. This allows a creditor who disputes that assertion to request a delay of the entry of the discharge in the case.

Subdivision (g)(2) of the rule is amended because the 2005 amendments to § 342(f) of the Code permit creditors in chapter 7 and 13 individual debtor cases to file a notice with any bankruptcy court of the address to which the creditor wishes all notices to be sent. The amendment to Rule 2002(g)(2) therefore only limits application of the subdivision when a creditor files a notice under § 342(f).

New subdivision (g)(5) implements § 342(g)(1) which was added to the Code in 2005. Section 342(g)(1) allows a creditor to treat a notice as not having been brought to the creditor's attention, and so potentially ineffective, until it is received by a person or organizational subdivision that the creditor has designated to receive notices under the Bankruptcy Code. Under that section, the creditor must have established reasonable procedures for such notices to be delivered to the designated person or subdivision. The rule provides that, in order to challenge a notice under § 342(g)(1), a creditor must have filed the name and address of the designated notice recipient, as well as a description of the procedures for directing notices to that recipient, prior to the time that the challenged notice was issued. The filing required by the rule may be made as part of a creditor's filing under § 342(f), which allows a creditor to file a notice of the address to be used by all bankruptcy courts or by particular bankruptcy courts to provide notice to the creditor in cases under chapters 7 and 13. Filing the name and address of the designated notice recipient and the procedures for directing notices to that recipient will reduce uncertainty as to the proper party for receiving notice and limit factual disputes as to whether a notice recipient has been designated and as to the nature of procedures adopted to direct notices to the recipient.

Subdivision (k) is amended to add notices given under subdivision (q) to the list of notices which must be served on the United States trustee.

Section 1514(d) of the Code, added by the 2005 amendments, requires that such additional time as is reasonable under the circumstances be given to creditors with foreign addresses with respect to notices and the filing of a proof of claim. Thus, subdivision (p)(1) is added to this rule to give the court flexibility to

direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses. If cause exists, such as likely delays in the delivery of mailed notices in particular locations, the court may order that notice also be given by email, facsimile, or private courier. Alternatively, the court may enlarge the notice period for a creditor with a foreign address. It is expected that in most situations involving foreign creditors, fairness will not require any additional notice or extension of the notice period. This rule recognizes that the court has discretion to establish procedures to determine, on its own initiative, whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest.

Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days' notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court may also shorten the additional notice time if circumstances so warrant. For example, if the court in a chapter 11 case determines that supplementing the notice to a foreign creditor with notice by electronic means, such as email or facsimile, would give the creditor reasonable notice, the court may order that the creditor be given only 20 days' notice in accordance with Rule 2002(a)(7).

Subdivision (p)(3) is added to provide that the court may, for cause, override a creditor's designation of a foreign address under Rule 2002(g). For example, if a party in interest believes that a

creditor has wrongfully designated a foreign address to obtain additional time when it has a significant presence in the United States, the party can ask the court to order that notices to that creditor be sent to an address other than the one designated by the foreign creditor.

Subdivision (q) is added to require that notice of the hearing on the petition for recognition of a foreign proceeding be given to the debtor, all administrators in foreign proceedings of the debtor, entities against whom provisional relief is sought, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice of the court's intention to communicate with a foreign court or foreign representative.

Changes Made After Publication:

Subdivision (g)(2) was amended to provide that the designated address of a governmental unit under Rule 5003(e) establishes an exception to the rule that a creditor's address is to be taken from the debtor's schedules. The fifth and sixth paragraphs of the Committee Note were amended to explain that change.

Subdivision (p)(3) was added to the rule to provide that the court may override a creditor's designation of a foreign mailing

address under Rule 2002(g). This will permit a party in interest to seek court relief if a creditor has improperly designated a foreign address.

Subdivision (q)(1) and (2) were amended by adopting language from § 101(24) to identify foreign representatives as "all persons or bodies authorized to administer foreign proceedings of the debtor" rather than as "all administrators in foreign proceedings of the debtor." References to Rule 5012 in subdivision (q)(2) and in the Committee Note were deleted.

Rule 2003. Meeting of Creditors or Equity Security Holders

(a) DATE AND PLACE. Except as otherwise provided in § 341(e) of the Code, in ~~In~~ a chapter 7 liquidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 40 days after the order for relief. In a chapter 12 family farmer's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 35 days after the order for relief. In

a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 50 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.

* * * * *

COMMITTEE NOTE

If the debtor has solicited acceptances to a plan before commencement of the case, § 341(e), which was added to the Code by the 2005 amendments, authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened. The rule is amended to recognize that a meeting of creditors might not be held in those cases.

Changes Made After Publication:

No changes were made after publication.

Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case

* * * * *

(b) ELECTION OF TRUSTEE.

* * * * *

(3) *Report of Election and Resolution of Disputes.*

(A) Report of Undisputed Election. If no dispute arises out of the election ~~is not disputed~~, the United States trustee shall promptly file a report ~~of~~ certifying the

election, including the name and address of the person elected and a statement that the election is undisputed. The report shall be accompanied by a verified statement of the person elected setting forth that person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. ~~The United States trustee shall file with the report an application for approval of the appointment in accordance with subdivision (c) of this rule. The report constitutes appointment of the elected person to serve as trustee, subject to court approval, as of the date of entry of the order approving the appointment.~~

(B) Dispute Arising Out of an ~~Disputed~~ Election. If a dispute arises out of an ~~the~~ election ~~is disputed~~, the United States trustee shall promptly file a report stating

that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. The report shall be accompanied by a verified statement by each candidate elected under each alternative presented by the dispute, setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, ~~and~~ or any person employed in the office of the United States trustee. Not later than the date on which the report of the disputed election is filed, the United States trustee shall mail a copy of the report and each verified statement to any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report, and to any committee appointed under § 1102 of the Code. ~~Unless a motion for the resolution of the dispute is filed~~

~~not later than 10 days after the United States trustee files the report, any person appointed by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee. If a motion for the resolution of the dispute is timely filed, and the court determines the result of the election and approves the person elected, the report will constitute appointment of the elected person as of the date of entry of the order approving the appointment.~~

(c) APPROVAL OF APPOINTMENT. An order approving the appointment of a trustee ~~elected under § 1104(b) or appointed under § 1104(d), or the appointment of~~ an examiner under § 1104(d) of the Code~~,~~ shall be made on application of the United States trustee. The application shall state the name of the person appointed and, to the best of the applicant's knowledge, all the person's connections with the

debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, ~~and~~ or persons employed in the office of the United States trustee. ~~Unless the person has been elected under § 1104(b), the~~ The application shall state the names of the parties in interest with whom the United States trustee consulted regarding the appointment. The application shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, ~~and~~ or any person employed in the office of the United States trustee.

COMMITTEE NOTE

Under § 1104(b)(2) of the Code, as amended in 2005, if an eligible, disinterested person is elected to serve as trustee in a chapter 11 case, the United States trustee is directed to file a report certifying the election. The person elected does not have to be appointed to the position. Rather, the filing of the report certifying the election itself

constitutes the appointment. The section further provides that in the event of a dispute in the election of a trustee, the court must resolve the matter. The rule is amended to be consistent with § 1104(b)(2).

When the United States trustee files a report certifying the election of a trustee, the person elected must provide a verified statement, similar to the statement required of professional persons under Rule 2014, disclosing connections with parties in interest and certain other persons connected with the case. Although court approval of the person elected is not required, the disclosure of the person's connections will enable parties in interest to determine whether the person is disinterested.

Changes Made After Publication:

No changes were made after publication.

Rule 2007.2. Appointment of Patient Care Ombudsman in a Health Care Business Case

(a) ORDER TO APPOINT PATIENT CARE OMBUDSMAN. In a chapter 7, chapter 9, or chapter 11 case in which the debtor is a health care business, the court shall order the appointment of a patient care ombudsman under

§ 333 of the Code, unless the court, on motion of the United States trustee or a party in interest filed no later than 20 days after the commencement of the case or within another time fixed by the court, finds that the appointment of a patient care ombudsman is not necessary under the specific circumstances of the case for the protection of patients.

(b) MOTION FOR ORDER TO APPOINT OMBUDSMAN. If the court has found that the appointment of an ombudsman is not necessary, or has terminated the appointment, the court, on motion of the United States trustee or a party in interest, may order the appointment at a later time if it finds that the appointment has become necessary to protect patients.

(c) NOTICE OF APPOINTMENT. If a patient care ombudsman is appointed under § 333, the United States trustee shall promptly file a notice of the appointment,

including the name and address of the person appointed. Unless the person appointed is a State Long-Term Care Ombudsman, the notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, patients, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office of the United States trustee.

(d) TERMINATION OF APPOINTMENT. On motion of the United States trustee or a party in interest, the court may terminate the appointment of a patient care ombudsman if the court finds that the appointment is not necessary to protect patients.

(e) MOTION. A motion under this rule shall be governed by Rule 9014. The motion shall be transmitted to the United States trustee and served on: the debtor; the

trustee; any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and such other entities as the court may direct.

COMMITTEE NOTE

Section 333 of the Code, added by the 2005 amendments, requires the court to order the appointment of a health care ombudsman within the first 30 days of a health care business case, unless the court finds that the appointment is not necessary for the protection of patients. The rule recognizes this requirement and provides a procedure by which a party may obtain a court order finding that the appointment of a patient care ombudsman is unnecessary. In the absence of a timely motion under subdivision (a) of this rule, the court will enter an order directing the United States trustee to appoint the ombudsman.

Subdivision (b) recognizes that, despite a previous order finding that a patient care ombudsman is not necessary, circumstances of the case may change or newly discovered evidence may demonstrate the necessity of an ombudsman to protect the interests of

patients. In that event, a party may move the court for an order directing the appointment of an ombudsman.

When the appointment of a patient care ombudsman is ordered, the United States trustee is required to appoint a disinterested person to serve in that capacity. Court approval of the appointment is not required, but subdivision (c) requires the person appointed, if not a State Long-Term Care Ombudsman, to file a verified statement similar to the statement filed by professional persons under Rule 2014 so that parties in interest will have information relevant to disinterestedness. If a party believes that the person appointed is not disinterested, it may file a motion asking the court to find that the person is not eligible to serve.

Subdivision (d) permits parties in interest to move for the termination of the appointment of a patient care ombudsman. If the movant can show that there no longer is any need for the ombudsman, the court may order the termination of the appointment.

Changes Made After Publication:

No changes were made after publication.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall:

(1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed;

(2) keep a record of receipts and the disposition of money and property received;

(3) file the reports and summaries required by § 704(8) of the Code which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited;

(4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be

holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case;

(5) in a chapter 11 reorganization case, on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and

(6) in a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than 20 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph terminates on the effective date of the plan, or conversion or dismissal of the case.

* * * * *

(d) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 15 days after the date when the representative becomes aware of the subsequent information.

~~(d)~~ (e) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.

COMMITTEE NOTE

Subparagraph (a)(6) implements § 308 of the Code, added by the 2005 amendments. That section requires small business chapter 11 debtors to file periodic financial and operating reports, and the rule sets the time for filing those reports and requires the use of an Official Form for the report. The obligation to file reports under this rule does not relieve the trustee or debtor of any other obligations to provide information or documents to the United States trustee.

The rule also is amended to fix the time for the filing of notices under § 1518, added to the Code in 2005. Former subdivision (d) is renumbered as subdivision (e).

Other changes are stylistic.

Changes Made After Publication:

No changes were made after publication.

Rule 2015.1. Patient Care Ombudsman

(a) REPORTS. A patient care ombudsman, at least 10 days before making a report under § 333(b)(2) of the Code, shall give notice that the report will be made to the court, unless the court orders otherwise. The notice shall be

transmitted to the United States trustee, posted conspicuously at the health care facility that is the subject of the report, and served on: the debtor; the trustee; all patients; and any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and such other entities as the court may direct. The notice shall state the date and time when the report will be made, the manner in which the report will be made, and, if the report is in writing, the name, address, telephone number, email address, and website, if any, of the person from whom a copy of the report may be obtained at the debtor's expense.

(b) AUTHORIZATION TO REVIEW CONFIDENTIAL PATIENT RECORDS. A motion by a patient care

ombudsman under § 333(c) to review confidential patient records shall be governed by Rule 9014, served on the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, and transmitted to the United States trustee subject to applicable nonbankruptcy law relating to patient privacy. Unless the court orders otherwise, a hearing on the motion may not be commenced earlier than 15 days after service of the motion.

COMMITTEE NOTE

This rule is new and implements § 333 of the Code, added by the 2005 amendments. Subdivision (a) is designed to give parties in interest, including patients or their representatives, sufficient notice so that they will be able to review written reports or attend hearings at which reports are made. The rule permits a notice to relate to a single report or to periodic reports to be given during the case. For example, the ombudsman may give notice that reports will be made at specified intervals or dates during the case.

Subdivision (a) of the rule also requires that the notice be posted conspicuously at the health care facility in a place where it will be seen by patients and their families or others visiting the patients. This may require posting in common areas and patient rooms within the facility. Because health care facilities and the patients they serve can vary greatly, the locations of the posted notice should be tailored to the specific facility that is the subject of the report.

Subdivision (b) requires the ombudsman to notify the patient and the United States trustee that the ombudsman is seeking access to confidential patient records so that they will be able to appear and be heard on the matter. This procedure should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality. Notices given under this rule are subject to the provisions of applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Changes Made After Publication:

Two stylistic changes were made to the rule. The reference to the court's authority to order otherwise was moved from the beginning to the end of the first sentence of subdivision (a). On line 19, the word "patient" was substituted for "health" to be consistent with the Code.

Rule 2015.2. Transfer of Patient in Health Care Business Case

Unless the court orders otherwise, if the debtor is a health care business, the trustee may not transfer a patient to another health care business under § 704(a)(12) of the Code unless the trustee gives at least 10 days' notice of the transfer to the patient care ombudsman, if any, the patient, and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care. The notice is subject to applicable nonbankruptcy law relating to patient privacy.

COMMITTEE NOTE

This rule is new. Section 704(a)(12), added to the Code by the 2005 amendments, authorizes the trustee to relocate patients when a health care business debtor's facility is in the process of being closed. The Code permits the trustee to take this action without the need for any court order, but the notice required by this rule will

enable a patient care ombudsman appointed under § 333, or a patient who contends that the trustee's actions violate § 704(a)(12), to have those issues resolved before the patient is transferred.

This rule also permits the court to enter an order dispensing with or altering the notice requirement in proper circumstances. For example, a facility could be closed immediately, or very quickly, such that 10 days' notice would not be possible in some instances. In that event, the court may shorten the time required for notice.

Notices given under this rule are subject to the provisions of applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Changes Made After Publication:

No changes were made after publication.

Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest

(a) REPORTING REQUIREMENT. In a chapter 11 case, the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of

each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. The reports shall be prepared as prescribed by the appropriate Official Form, and shall be based upon the most recent information reasonably available to the trustee or debtor in possession.

(b) TIME FOR FILING; SERVICE. The first report required by this rule shall be filed no later than five days before the first date set for the meeting of creditors under § 341 of the Code. Subsequent reports shall be filed no less frequently than every six months thereafter, until the effective date of a plan or the case is dismissed or converted. Copies of the report shall be served on the United States trustee, any committee appointed under § 1102 of the Code, and any other party in interest that has filed a request therefor.

(c) PRESUMPTION OF SUBSTANTIAL OR CONTROLLING INTEREST; JUDICIAL DETERMINATION. For purposes of this rule, an entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling interest. An entity in which the estate controls or owns less than a 20 percent interest shall be presumed not to be an entity in which the estate has a substantial or controlling interest. Upon motion, the entity, any holder of an interest therein, the United States trustee, or any other party in interest may seek to rebut either presumption, and the court shall, after notice and a hearing, determine whether the estate's interest in the entity is substantial or controlling.

(d) MODIFICATION OF REPORTING REQUIREMENT. The court may, after notice and a hearing,

vary the reporting requirement established by subdivision (a) of this rule for cause, including that the trustee or debtor in possession is not able, after a good faith effort, to comply with those reporting requirements, or that the information required by subdivision (a) is publicly available.

(e) NOTICE AND PROTECTIVE ORDERS. No later than 14 days before filing the first report required by this rule, the trustee or debtor in possession shall send notice to the entity in which the estate has a substantial or controlling interest, and to all holders – known to the trustee or debtor in possession – of an interest in that entity, that the trustee or debtor in possession expects to file and serve financial information relating to the entity in accordance with this rule. The entity in which the estate has a substantial or controlling interest, or a person holding an interest in that entity, may request protection of the information under § 107 of the Code.

(f) EFFECT OF REQUEST. Unless the court orders otherwise, the pendency of a request under subdivisions (c), (d), or (e) of this rule shall not alter or stay the requirements of subdivision (a).

COMMITTEE NOTE

This rule implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Reports are to be made on the appropriate Official Form. While § 419 of BAPCPA places the obligation to report upon the "debtor," this rule extends the obligation to include cases in which a trustee has been appointed. The court can order that the reports not be filed in appropriate circumstances, such as when the information that would be included in these reports is already available to interested parties.

Changes After Publication:

In subdivision (e), the 20 day period was changed to 14 days. This better reconciles the timing of the notice and the scheduling of the § 341 meeting of creditors, and it is also consistent with the upcoming time computation amendments.

Rule 3002. Filing Proof of Claim or Interest

* * * * *

(c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:

(1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. ~~On motion of a governmental unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the governmental unit.~~ A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under § 1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of

the tax return. The court may, for cause, enlarge the time for a governmental unit to file a proof of claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim.

* * * * *

(5) If notice of insufficient assets to pay a dividend was given to creditors ~~pursuant to~~ under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall ~~notify~~ give at least 90 days' notice by mail to ~~the~~ creditors of that fact and ~~that they may file~~ of the date by which proofs of claim ~~within 90 days after the mailing of the notice~~ must be filed.

(6) If notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days if the

court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

COMMITTEE NOTE

Subdivision (c)(1) is amended to reflect the addition of § 1308 to the Bankruptcy Code in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision (c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case. The amendment also allows the governmental unit to move for additional time to file a proof of claim prior to expiration of the applicable filing period.

Subdivision (c)(5) of the rule is amended to set a new period for providing notice to creditors that they may file a proof of claim in a case in which they were previously informed that there was no need to file a claim. Under Rule 2002(e), if it appears that there will be no distribution to creditors, the creditors are notified of this fact and are informed that if assets are later discovered and a distribution is likely that a new notice will be given to the creditors. This second notice is prescribed by Rule 3002(c)(5). The rule is amended to direct the clerk to give at least 90 days' notice of the time within which creditors may file a proof of claim. Setting the deadline in this manner allows the notices being sent to creditors to be more accurate regarding the deadline than was possible under the prior rule. The rule previously began the 90 day notice period from the time of the

mailing of the notice, a date that could vary and generally would not even be known to the creditor. Under the amended rule, the notice will identify a specific bar date for filing proofs of claim thereby being more helpful to the creditors.

Subdivision (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with § 1514(d), added to the Code by the 2005 amendments, and requires that the rules and orders of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

Other changes are stylistic.

Changes Made After Publication:

Subdivision (c)(1) was amended to allow governmental units to move for an enlargement of the time to file a proof of claim. The Committee Note was amended to describe this addition to the rule.

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases

* * * * *

(c) FILING PROOF OF CLAIM.

(1) *Who May File.* Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

(2) *Who Must File.* Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) *Time for Filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and

under the conditions stated in Rule 3002(c)(2), (c)(3), ~~and~~ (c)(4), and (c)(6).

(4) *Effect of Filing Claim or Interest.* A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(a)(1) of the Code.

(5) *Filing by Indenture Trustee.* An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

* * * * *

COMMITTEE NOTE

Subdivision (c)(3) is amended to implement § 1514(d) of the Code, which was added by the 2005 amendments. It makes the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. This change was necessary so that creditors with foreign addresses be provided such additional time as is reasonable under the circumstances to file proofs of claims.

Changes Made After Publication:

No changes were made after publication.

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

* * * * *

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement under § 1125 of the Code or evidence showing compliance with § 1126(b) ~~of the Code~~ shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated and Rule 3017.1 shall apply as if the plan is a disclosure statement.

* * * * *

(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a small business case, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court.

COMMITTEE NOTE

Subdivision (b) is amended to recognize that, in 2005, § 1125(f)(1) was added to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1 and is subject to all other rules applicable to disclosure statements in small business cases.

Subdivision (d) is added to the rule to implement § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 which requires the promulgation of Official Forms for plans and disclosure statements in small business cases. Section 1125(f)(2) of the Code provides that the court may approve a disclosure statement submitted on the appropriate Official Form or on a standard form approved by the court. The rule takes no position on whether a court

may require a local standard form disclosure statement or plan of reorganization in lieu of the Official Forms.

Other amendments are stylistic.

Changes Made After Publication:

No changes were made after publication.

Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case

(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. ~~If the debtor is~~ In a small business case ~~and has made a timely election to be considered a small business in a chapter 11 case~~, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016~~(b)~~. On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the hearing on confirmation.

* * * * *

COMMITTEE NOTE

Section 101 of the Code, as amended in 2005, defines a "small business case" and "small business debtor,"and eliminates any need to elect that status. Therefore, the reference in the rule to an election is deleted.

As provided in the amendment to Rule 3016(b), a plan intended to provide adequate information in a small business case under § 1125(f)(1) may be conditionally approved and is otherwise treated as a disclosure statement under this rule.

Changes Made After Publication:

No changes were made after publication.

Rule 3019. Modification of Accepted Plan ~~Before Confirmation~~ in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) MODIFICATION OF PLAN BEFORE CONFIRMATION. In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all

creditors and equity security holders who have previously accepted the plan.

(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 20 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the

proposed modification shall be filed and served on the debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.

COMMITTEE NOTE

The 2005 amendments to § 1127 of the Code provide for modification of a confirmed plan in an individual debtor chapter 11 case. Therefore, the rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.

Changes Made After Publication:

The last sentence of the published rule provided that an objection to modification of a plan is governed by Rule 9014. The sentence is deleted and the reference to Rule 9014 is moved to the first sentence of subdivision (b) of the rule. The Committee Note was revised to make the reference to the 2005 amendments to the Bankruptcy Code consistent with their identification in other Committee Notes.

Rule 4002. Duties of Debtor

(a) IN GENERAL. In addition to performing other duties prescribed by the Code and rules, the debtor shall:

(1) attend and submit to an examination at the times ordered by the court;

(2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness;

(3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007;

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

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

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

(1) *Personal Identification.* Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

(2) *Financial Information.* Every individual debtor shall bring to the meeting of creditors under § 341, and make available to the trustee, the following documents or copies of them, or provide a written statement that the

documentation does not exist or is not in the debtor's possession:

(A) evidence of current income such as the most recent payment advice;

(B) unless the trustee or the United States trustee instructs otherwise, statements for each of the debtor's depository and investment accounts, including checking, savings, and money market accounts, mutual funds and brokerage accounts for the time period that includes the date of the filing of the petition; and

(C) documentation of monthly expenses claimed by the debtor if required by § 707(b)(2)(A) or (B).

(3) *Tax Return.* At least 7 days before the first date set for the meeting of creditors under § 341, the debtor shall provide to the trustee a copy of the debtor's federal income tax return for the most recent tax year ending

immediately before the commencement of the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.

(4) *Tax Returns Provided to Creditors.* If a creditor, at least 15 days before the first date set for the meeting of creditors under § 341, requests a copy of the debtor's tax return that is to be provided to the trustee under subdivision (b)(3), the debtor, at least 7 days before the first date set for the meeting of creditors under § 341, shall provide to the requesting creditor a copy of the return, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.

(5) *Confidentiality of Tax Information.* The debtor's obligation to provide tax returns under Rule 4002(b)(3) and (b)(4) is subject to procedures for

safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts.

COMMITTEE NOTE

This rule is amended to implement § 521(a)(1)(B)(iv) and (e)(2), added to the Code by the 2005 amendments. These Code amendments expressly require the debtor to file with the court, or provide to the trustee, specific documents. The amendments to the rule implement these obligations and establish a time frame for creditors to make requests for a copy of the debtor's Federal income tax return. The rule also requires the debtor to provide documentation in support of claimed expenses under § 707(b)(2)(A) and (B).

Subdivision (b) of the rule is also amended to require the debtor to cooperate with the trustee by providing materials and documents necessary to assist the trustee in the performance of the trustee's duties. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521, or to limit the access of the Attorney General to any information provided by the debtor in the case. Subdivision (b)(2) 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. Under subdivision (b)(2)(B), the trustee or the United States trustee can instruct debtors that they need not provide the documents described in that subdivision. Under subdivisions (b)(3) and (b)(4), the debtor must

obtain and provide copies of tax returns or tax transcripts to the appropriate person, unless no such documents exist. 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 provided to the trustee would not be made available to any other party in interest at the § 341 meeting of creditors other than the Attorney General. Some of the documents may contain otherwise private information that should not be disseminated. For example, pay stubs and financial account statements might include the social-security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. The debtor should redact all but the last four digits of all social-security numbers and the names of any minors when they appear in these documents. 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.

Tax information produced under this rule is subject to procedures for safeguarding confidentiality established by the Director of the Administrative Office of the United States Courts.

Changes Made After Publication:

The second paragraph of the Committee Note was amended to clarify that the debtor's duty to provide copies of tax returns or tax

transcripts are governed by a different standard than the debtor's duty to provide other financial information.

Rule 4003. Exemptions

* * * * *

(b) OBJECTING TO A CLAIM OF EXEMPTIONS.

(1) Except as provided in paragraphs (2) and (3), a ~~A~~ party in interest may file an objection to the list of property claimed as exempt ~~only~~ within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

(2) The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of

the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney.

(3) An objection to a claim of exemption based on § 522(q) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed.

(4) ~~Copies~~ A copy of ~~the~~ any objection ~~objections~~ shall be delivered or mailed to the trustee, the debtor and the debtor's attorney, and the person filing the list; and ~~the~~ that person's attorney ~~for that person~~.

* * * * *

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of

the Code shall be by motion in accordance with Rule 9014. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

COMMITTEE NOTE

Subdivision (b) is rewritten to include four paragraphs.

Subdivision (b)(2) is added to the rule to permit the trustee to object to an exemption at any time up to one year after the closing of the case if the debtor fraudulently claimed the exemption. Extending the deadline for trustees to object to an exemption when the exemption claim has been fraudulently made will permit the court to review and, in proper circumstances, deny improperly claimed exemptions, thereby protecting the legitimate interests of creditors and the bankruptcy estate. However, similar to the deadline set in § 727(e) of the Code for revoking a discharge which was fraudulently obtained, an objection to an exemption that was fraudulently claimed must be filed within one year after the closing of the case. Subdivision (b)(2) extends the objection deadline only for trustees.

Subdivision (b)(3) is added to the rule to reflect the addition of subsection (q) to § 522 of the Code by the 2005 Act. Section 522(q) imposes a $136,875 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider

issues relating to § 522(q) late in the case, and the 30-day period for objections would not be appropriate for this provision.

Subdivision (d) is amended to clarify that a creditor with a lien on property that the debtor is attempting to avoid on the grounds that the lien impairs an exemption may raise in defense to the lien avoidance action any objection to the debtor's claimed exemption. The right to object is limited to an objection to the exemption of the property subject to the lien and for purposes of the lien avoidance action only. The creditor may not object to other exemption claims made by the debtor. Those objections, if any, are governed by Rule 4003(b).

Other changes are stylistic.

Changes Made After Publication:

The deadline for filing objections to exemptions under subdivision (b)(1) was returned to 30 days after the conclusion of the § 341 meeting of creditors rather than the 60 day period proposed in the published rule. The second paragraph of the Committee Note which discussed this change was therefore deleted. Subdivisions (b)(2) and (b)(3) were amended to add the debtor and the debtor's attorney to the list of persons to whom objections to exemptions must be delivered.

Rule 4004. Grant or Denial of Discharge

* * * * *

(c) GRANT OF DISCHARGE.

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual; ;

(B) a complaint objecting to the discharge has been filed; ;

(C) the debtor has filed a waiver under § 727(a)(10); ;

(D) a motion to dismiss the case under § 707 is pending; ;

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending; ;

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending; ~~or~~ ;

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f);

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7);

(I) a motion to delay or postpone discharge under § 727(a)(12) is pending;

(J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;

(K) a presumption has arisen under § 524(m) that a reaffirmation agreement is an undue hardship; or

(L) a motion is pending to delay discharge, because the debtor has not filed with the court all tax documents required to be filed under § 521(f).

* * * * *

(3) If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than 30 days after the statement is filed.

* * * * *

COMMITTEE NOTE

Subdivision (c)(1)(G) is amended to reflect the fee waiver provision in 28 U.S.C. § 1930, added by the 2005 amendments.

Subdivision (c)(1)(H) is new. It reflects the 2005 addition to the Code of §§ 727(a)(11) and 1328(g), which require that individual debtors complete a course in personal financial management as a condition to the entry of a discharge. Including this requirement in the rule helps prevent the inadvertent entry of a discharge when the debtor has not complied with this requirement. If a debtor fails to file

the required statement regarding a personal financial management course, the clerk will close the bankruptcy case without the entry of a discharge.

Subdivision (c)(1)(I) is new. It reflects the 2005 addition to the Code of § 727(a)(12). This provision is linked to § 522(q). Section 522(q) limits the availability of the homestead exemption for individuals who have been convicted of a felony or who owe a debt arising from certain causes of action within a particular time frame. The existence of reasonable cause to believe that § 522(q) may be applicable to the debtor constitutes grounds for withholding the discharge.

Subdivision (c)(1)(J) is new. It accommodates the deadline for filing a reaffirmation agreement established by Rule 4008(a).

Subdivision (c)(1)(K) is new. It reflects the 2005 revisions to § 524 of the Code that alter the requirements for approval of reaffirmation agreements. Section 524(m) sets forth circumstances under which a reaffirmation agreement is presumed to be an undue hardship. This triggers an obligation to review the presumption and may require notice and a hearing. Subdivision (c)(1)(J) has been added to prevent the discharge from being entered until the court approves or disapproves the reaffirmation agreement in accordance with § 524(m).

Subdivision (c)(1)(L) is new. It implements § 1228(a) of Public Law Number 109-8, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which prohibits entry of a discharge unless required tax documents have been provided to the court.

Subdivision (c)(3) is new. It postpones the entry of the discharge of an individual debtor in a case under chapter 11, 12, or 13 if there is a question as to the applicability of § 522(q) of the Code. The postponement provides an opportunity for a creditor to file a motion to limit the debtor's exemption under that provision.

Other changes are stylistic.

Changes Made After Publication:

No changes were made after publication.

Rule 4006. Notice of No Discharge

If an order is entered; denying a discharge; ~~or~~ revoking a discharge; ~~or if~~ approving a waiver of discharge; ~~is filed~~ or, in the case of an individual debtor, closing the case without the entry of a discharge, the clerk ~~, after the order becomes final or the waiver is filed,~~ shall promptly ~~give notice thereof to~~ notify all ~~creditors~~ parties in interest in the manner provided ~~in~~ by Rule 2002.

COMMITTEE NOTE

This amendment was necessary because the 2005 amendments to the Code require that individual debtors in a chapter 7 or 13 case complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, the case may be closed and no discharge will be entered. Reopening the case is governed by § 350 and Rule 5010. The rule is amended to provide notice to parties in interest, including the debtor, that no discharge was entered.

Changes Made After Publication:

No changes were made after publication.

Rule 4007. Determination of Dischargeability of a Debt

* * * * *

(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, ~~OR~~ CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE

OF TIME FIXED. Except as otherwise provided in subdivision (d), a ~~A~~ complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

(d) TIME FOR FILING COMPLAINT UNDER § ~~523(c)~~ 523(a)(6) IN A CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under § ~~523(c)~~

523(a)(6) and shall give no less than 30 days' notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

* * * * *

COMMITTEE NOTE

Subdivision (c) is amended because of the 2005 amendments to § 1328(a) of the Code. This revision expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c).

The amendment to subdivision (d) reflects the 2005 amendments to § 1328(a) that expands the exceptions to discharge upon completion of a chapter 13 plan, including two out of three of the provisions that fall within § 523(c). However, the 2005 revisions to § 1328(a) do not include a reference to § 523(a)(6), which is the third provision to which § 523(c) refers. Thus, subdivision (d) is now limited to that provision.

Changes Made After Publication:

No changes were made after publication.

Rule 4008. ~~Discharge and Reaffirmation Hearing~~ Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement

(a) FILING OF REAFFIRMATION AGREEMENT. A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code. The court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement. ~~Not more than 30 days following the entry of an order granting or denying a discharge, or confirming a plan in a chapter 11 reorganization case concerning an individual debtor and on not less than 10 days notice to the debtor and the trustee, the court may hold a hearing as provided in~~

~~§ 524(d) of the Code. A motion by the debtor for approval of a reaffirmation agreement shall be filed before or at the hearing.~~

(b) STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT. The debtor's statement required under § 524(k)(6)(A) of the Code shall be accompanied by a statement of the total income and expenses stated on schedules I and J. If there is a difference between the total income and expenses stated on those schedules and the statement required under § 524(k)(6)(A), the statement required by this subdivision shall include an explanation of the difference.

COMMITTEE NOTE

This 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, § 524(k)(6)(A) provides that each

reaffirmation agreement must be accompanied by a statement indicating the debtor's ability to make the payments called for by the agreement. In the event that this statement reflects an insufficient income to allow payment of the reaffirmed debt, § 524(m) provides that a presumption of undue hardship arises, allowing the court to disapprove the reaffirmation agreement, but only after a hearing conducted prior to the entry of discharge. Rule 4004(c)(1)(K) accommodates this provision by delaying the entry of discharge where a presumption of undue hardship arises. However, in order for that rule to be effective, the reaffirmation agreement itself must be filed before the entry of discharge. Under Rule 4004(c)(1) discharge is to be entered promptly after the expiration of the time for filing a complaint objecting to discharge, which, under Rule 4004(a), is 60 days after the first date set for the meeting of creditors under § 341(a). Accordingly, that date is set as the deadline for filing a reaffirmation agreement.

Any party may file the agreement with the court. Thus, whichever party has a greater incentive to enforce the agreement usually will file it. In the event that the parties are unable to file a reaffirmation agreement in a timely fashion, the rule grants the court broad discretion to permit a late filing. A corresponding change to Rule 4004(c)(1)(J) accommodates such an extension by providing for a delay in the entry of discharge during the pendency of a motion to extend the time for filing a reaffirmation agreement.

Rule 4008 is also amended by deleting provisions regarding the timing of any reaffirmation and discharge hearing. As noted above, § 524(m) itself requires that hearings on undue hardship be conducted prior to the entry of discharge. In other respects, including hearings to approve reaffirmation agreements of unrepresented

debtors under § 524(c)(6), the rule leaves discretion to the court 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.

Changes Made After Publication:

The only change was stylistic. The phrase "of the Code" was added to subdivision (b).

Rule 5001. Courts and Clerks' Offices

* * * * *

(b) TRIALS AND HEARINGS; ORDERS IN CHAMBERS. All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. Except as otherwise provided in 28 U.S.C. § 152(c), all ~~All~~ other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be

conducted outside the district without the consent of all parties affected thereby.

* * * * *

COMMITTEE NOTE

The rule is amended to permit bankruptcy judges to hold hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the 2005 amendment to 28 U.S.C. § 152(c). Under that provision, bankruptcy judges may hold court outside of their districts in emergency situations and when the business of the court otherwise so requires. This amendment to the rule is intended to implement the legislation.

Changes Made After Publication:

No changes were made after publication.

Rule 5003. Records Kept By the Clerk

* * * * *

(e) REGISTER OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS AND

CERTAIN TAXING AUTHORITIES. The United States or the state or territory in which the court is located may file a statement designating its mailing address. The United States, state, territory, or local governmental unit responsible for collecting taxes within the district in which the case is pending may also file a statement designating an address for service of requests under § 505(b) of the Code, and the designation shall describe where further information concerning additional requirements for filing such requests may be found. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes ~~these~~ the mailing addresses; designated under the first sentence of this subdivision, and a separate register of the addresses designated for the service of requests under § 505(b) of the Code. ~~but the~~ The clerk is not required to include in ~~the~~ any

single register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

* * * * *

COMMITTEE NOTE

The rule is amended to implement § 505(b)(1) of the Code added by the 2005 amendments, which allows a taxing authority to designate an address to use for the service of requests under that subsection. Under the amendment, the clerk is directed to maintain a separate register for mailing addresses of governmental units solely for the service of requests under § 505(b). This register is in addition to the register of addresses of governmental units already maintained by the clerk. The clerk is required to keep only one address for a governmental unit in each register.

Changes Made After Publication:

Subdivision (e) was amended to clarify that the clerk must maintain a separate mailing address register that contains the addresses to which notices pertaining to actions under § 505 of the Code are to be sent.

Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors

If a presumption of abuse has arisen under § 707(b) in a chapter 7 case of an individual with primarily consumer debts, the clerk shall within 10 days after the date of the filing of the petition notify creditors of the presumption of abuse in

accordance with Rule 2002. If the debtor has not filed a statement indicating whether a presumption of abuse has arisen, the clerk shall within 10 days after the date of the filing of the petition notify creditors that the debtor has not filed the statement and that further notice will be given if a later filed statement indicates that a presumption of abuse has arisen. If a debtor later files a statement indicating that a presumption of abuse has arisen, the clerk shall notify creditors of the presumption of abuse as promptly as practicable.

COMMITTEE NOTE

This rule is new. The 2005 amendments to § 342 of the Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent

the first notice, and the debtor's statement indicates a presumption of abuse, the rule requires that the clerk send a second notice.

Changes Made After Publication:

No changes were made after publication.

Rule 6004. Use, Sale, or Lease of Property

* * * * *

(g) SALE OF PERSONALLY IDENTIFIABLE INFORMATION.

(1) *Motion.* A motion for authority to sell or lease personally identifiable information under § 363(b)(1)(B) shall include a request for an order directing the United States trustee to appoint a consumer privacy ombudsman under § 332. Rule 9014 governs the motion which shall be served on: any committee elected under § 705 or appointed under § 1102 of the Code, or if the case is a chapter 11

reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list of creditors filed under Rule 1007(d); and on such other entities as the court may direct. The motion shall be transmitted to the United States trustee.

(2) *Appointment.* If a consumer privacy ombudsman is appointed under § 332, no later than 5 days before the hearing on the motion under § 363(b)(1)(B), the United States trustee shall file a notice of the appointment, including the name and address of the person appointed. The United States trustee's notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

~~(g)~~ (h) STAY OF ORDER AUTHORIZING USE, SALE, OR LEASE OF PROPERTY. An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.

COMMITTEE NOTE

The rule is amended by inserting a new subdivision (g) to implement §§ 332 and 363(b)(1)(B) of the Code, added by the 2005 amendments. This rule governs the proposed transfer of personally identifiable information in a manner inconsistent with any policy covering the transfer of the information. Rule 2002(c)(1) requires the seller to state in the notice of the sale or lease whether the transfer is consistent with and policy governing the transfer of the information.

Under § 332 of the Code, the consumer privacy ombudsman must be appointed at least five days prior to the hearing on a sale or lease of personally identifiable information. In an appropriate case, the consumer privacy ombudsman may seek a continuance of the hearing on the proposed sale to perform the tasks required of the ombudsman by § 332 of the Code.

Former subdivision (g) is redesignated as subdivision (h).

Changes Made After Publication:

The Committee Note was amended to highlight the connection between this rule and Rule 2002 with regard to the obligation to provide notice of proposed transactions. It was also amended to recognize the ability of the consumer privacy ombudsman to seek a continuance of a hearing on the proposed sale of personally identifiable information.

Rule 6011. Disposal of Patient Records in Health Care Business Case

(a) NOTICE BY PUBLICATION UNDER § 351(1)(A). A notice regarding the claiming or disposing of patient records under § 351(1)(A) shall not identify any patient by name or other identifying information, but shall:

(1) identify with particularity the health care facility whose patient records the trustee proposes to destroy;

(2) state the name, address, telephone number, email address, and website, if any, of a person from whom information about the patient records may be obtained;

(3) state how to claim the patient records; and

(4) state the date by which patient records must be claimed, and that if they are not so claimed the records will be destroyed.

(b) NOTICE BY MAIL UNDER § 351(1)(B). Subject to applicable nonbankruptcy law relating to patient privacy, a notice regarding the claiming or disposing of patient records under § 351(1)(B) shall, in addition to including the information in subdivision (a), direct that a patient's family member or other representative who receives the notice inform the patient of the notice. Any notice under this subdivision shall be mailed to the patient and any family member or other contact person whose name and address

have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, to the Attorney General of the State where the health care facility is located, and to any insurance company known to have provided health care insurance to the patient.

(c) PROOF OF COMPLIANCE WITH NOTICE REQUIREMENT. Unless the court orders the trustee to file proof of compliance with § 351(1)(B) under seal, the trustee shall not file, but shall maintain, the proof of compliance for a reasonable time.

(d) REPORT OF DESTRUCTION OF RECORDS. The trustee shall file, no later than 30 days after the destruction of patient records under § 351(3), a report certifying that the unclaimed records have been destroyed and explaining the method used to effect the destruction. The report shall not identify any patient by name or other identifying information.

COMMITTEE NOTE

This rule is new. It implements § 351(1), which was added to the Code by the 2005 amendments. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The Code provision also requires that individualized notice be sent to each patient and to the patient's family member or other contact person.

The variety of health care businesses and the range of current and former patients present the need for flexibility in the creation and publication of the notices that will be given. Nevertheless, there are some matters that must be included in any notice being given to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (a) of this rule lists the minimum requirements for notices given under § 351(1)(A), and subdivision (b) governs the form of notices under § 351(1)(B). Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Subdivision (c) directs the trustee to maintain proof of compliance with § 351(1)(B), but because the proof of compliance may contain patient names that should or must remain confidential, it prohibits filing the proof of compliance unless the court orders the trustee to file it under seal.

Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. However, because the report will be filed with the court and ordinarily will be available to the public under § 107, the names, addresses, and other identifying information of patients are not to be included in the report to protect patient privacy.

Changes Made After Publication:

Subdivision (b)(2) was amended to add the Attorney General of the State where a health care facility is located to the list of entities entitled to notice of the disposal of patient records.

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

* * * * *

(e) ELECTION TO HAVE APPEAL HEARD BY DISTRICT COURT INSTEAD OF BANKRUPTCY APPELLATE PANEL; WITHDRAWAL OF ELECTION.

(1) *Separate Writing for Election.* An election to have an appeal heard by the district court under 28 U.S.C.

§ 158(c)(1) may be made only by a statement of election contained in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).

(2) *Withdrawal of Election.* A request to withdraw the election may be filed only by written stipulation of all the parties to the appeal or their attorneys of record. Upon such a stipulation, the district court may either transfer the appeal to the bankruptcy appellate panel or retain the appeal in the district court.

(f) CERTIFICATION FOR DIRECT APPEAL TO COURT OF APPEALS.

(1) *Timely Appeal Required.* A certification of a judgment, order, or decree of a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2) shall not be effective until a timely appeal has been taken in the manner required by

subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002.

(2) *Court Where Certification Made and Filed.* A certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be filed in the court in which a matter is pending for purposes of 28 U.S.C. § 158(d)(2) and this rule. A matter is pending in a bankruptcy court until the docketing, in accordance with Rule 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. § 158(a)(3). A matter is pending in a district court or bankruptcy appellate panel after the docketing, in accordance with Rule 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. § 158(a)(3).

(A) Certification by Court on Request or Court's Own Initiative.

(i) Before Docketing or Grant of Leave to Appeal. Only a bankruptcy court may make a certification on request or on its own initiative while the matter is pending in the bankruptcy court.

(ii) After Docketing or Grant of Leave to Appeal. Only the district court or bankruptcy appellate panel involved may make a certification on request of the parties or on its own initiative while the matter is pending in the district court or bankruptcy appellate panel.

(B) Certification by All Appellants and Appellees Acting Jointly. A certification by all the appellants and appellees, if any, acting jointly may be made by filing the appropriate Official Form with the clerk of the court in which the matter is pending. The certification may be accompanied by a short statement of the basis for the certification, which

may include the information listed in subdivision (f)(3)(C) of this rule.

(3) *Request for Certification; Filing; Service; Contents.*

(A) A request for certification shall be filed, within the time specified by 28 U.S.C. § 158(d)(2), with the clerk of the court in which the matter is pending.

(B) Notice of the filing of a request for certification shall be served in the manner required for service of a notice of appeal under Rule 8004.

(C) A request for certification shall include the following:

(i) the facts necessary to understand the question presented;

(ii) the question itself;

(iii) the relief sought;

(iv) the reasons why the appeal should be allowed and is authorized by statute or rule, including why a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists; and

(v) an attached copy of the judgment, order, or decree complained of and any related opinion or memorandum.

(D) A party may file a response to a request for certification or a cross request within 10 days after the notice of the request is served, or another time fixed by the court.

(E) Rule 9014 does not govern a request, cross request, or any response. The matter shall be submitted without oral argument unless the court otherwise directs.

(F) A certification of an appeal under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties.

(4) *Certification on Court's Own Initiative.*

(A) A certification of an appeal on the court's own initiative under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties in the manner required for service of a notice of appeal under Rule 8004. The certification shall be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(3)(C)(i)-(iv) of this rule.

(B) A party may file a supplementary short statement of the basis for certification within 10 days after the certification.

(5) *Duties of Parties After Certification.* A petition for permission to appeal in accordance with F. R.

App. P. 5 shall be filed no later than 30 days after a certification has become effective as provided in subdivision (f)(1).

COMMITTEE NOTE

Subdivision (e) is amended by redesignating the subdivision as (e)(1) and adding new subdivision (e)(2). Subdivision (e)(2) explicitly recognizes the district court's authority to transfer an appeal to the bankruptcy appellate panel on two conditions: first, all of the parties to the appeal must have agreed to request the withdrawal of the election to have the district court hear the appeal; and, second, the district court must decide whether to grant the request for withdrawal. The district court has discretion either to keep the case or transfer it to the bankruptcy appellate panel, which will prevent strategic behavior by parties and avoid the wasting of judicial resources.

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative under subdivision (f)(4), or in response to a request of a party or a majority of the appellants and appellees (if any) under subdivision (f)(3). Certification also can be made by all of the appellants and appellees under subdivision (f)(2)(B). Under

subdivision (f)(1), certification is effective only when a timely appeal is commenced under subdivision (a) or (b), and a notice of appeal has been timely filed under Rule 8002. These actions will provide sufficient notice of the appeal to the circuit clerk, so the rule dispenses with the uncodified temporary procedural requirements set out in § 1233(b)(4) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8.

The rule adopts a bright-line test for identifying the court in which a matter is pending. Under subdivision (f)(2), the bright-line chosen is the "docketing" under Rule 8007(b) of an appeal of an interlocutory order or decree under 28 U.S.C. § 158(a)(2) or a final judgment, order or decree under 28 U.S.C. § 158(a)(1), or the granting of leave to appeal any other interlocutory judgment, order or decree under 28 U.S.C. § 158(a)(3), whichever is earlier.

To ensure that parties are aware of a certification, the rule requires either that it be made on the Official Form (if being made by all of the parties to the appeal) or on a separate document (whether the certification is made on the court's own initiative or in response to a request by a party). This is particularly important because the rule adopts the bankruptcy practice established by Rule 8001(a) and (b) of requiring a notice of appeal in every instance, including interlocutory orders, of appeals from bankruptcy court orders, judgments, and decrees. Because this requirement is satisfied by filing the notice of appeal that takes the appeal to the district court or bankruptcy appellate panel in the first instance, the rule does not require a separate notice of appeal if a certification occurs after a district court or bankruptcy appellate panel decision.

A certification under subdivision (f)(1) does not place the appeal in the circuit court. Rather, the court of appeals must first authorize the direct appeal. Subdivision (f)(5) therefore provides that any party intending to pursue the appeal in the court of appeals must seek that permission under Rule 5 of the Federal Rules of Appellate Procedure. Subdivision (f)(5) requires that the petition for permission to appeal be filed within 30 days after an effective certification.

Changes Made After Publication:

The second paragraph of the Committee Note was amended to identify more specifically the different ways in which the certification of a direct appeal to the court of appeals.

Rule 8003. Leave to Appeal

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(d) REQUIREMENT OF LEAVE TO APPEAL. If leave to appeal is required by 28 U.S.C. § 158(a) and has not earlier been granted, the authorization of a direct appeal by a court of appeals under 28 U.S.C. § 158(d)(2) shall be deemed to satisfy the requirement for leave to appeal.

COMMITTEE NOTE

The rule is amended to add subdivision (d) to solve the jurisdictional problem that could otherwise ensue when a district court or bankruptcy appellate panel has not granted leave to appeal under 28 U.S.C. § 158(a)(3). If the court of appeals accepts the appeal, the requirement of leave to appeal is deemed satisfied. However, if the court of appeals does not authorize a direct appeal, the question of whether to grant leave to appeal remains a matter to be resolved by the district court or the bankruptcy appellate panel.

Changes Made After Publication:

No changes were made after publication.

Rule 9006. Time

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(b) ENLARGEMENT.

(1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the

court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) *Enlargement Not Permitted.* The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.

(3) *Enlargement ~~Limited~~ Governed By Other Rules*. The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules. In addition, the court may enlarge the time to file the statement required under

Rule 1007(b)(7), and to file schedules and statements in a small business case under § 1116(3) of the Code, only to the extent and under the conditions stated in Rule 1007(c).

(c) REDUCTION.

* * * * *

(2) *Reduction Not Permitted.* The court may not reduce the time for taking action under ~~pursuant to~~ Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, and 9033(b). In addition, the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7).

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COMMITTEE NOTE

Subdivision (b)(3) is amended to implement § 1116(3) of the Code, as amended by the 2005 amendments, which places specific limits on the extension of time for filing schedules and statements of financial affairs in a small business case.

Subdivisions (b)(3) and (c)(2) are amended to provide that enlargement or reduction of the time to file the statement of completion of a personal financial management course required by Rule 1007(b)(7) are governed by Rule 1007(c). Likewise, the amendments to subdivisions (b)(3) and (c)(2) recognize that the enlargement of time to file a reaffirmation agreement is governed by Rule 4008(a), and that reduction of the time provided under that rule is not permitted.

Other amendments are stylistic.

Changes Made After Publication:

Subdivision (b)(3) was amended to provide that Rule 9006 does not govern the enlargement of time to file a reaffirmation agreement, the statement required under Rule 1007(b)(7), or the time to file schedules and statements of financial affairs in small business cases. The title of subdivision (b)(3) was also amended to more accurately describe the operation of the provision. Subdivision (c)(2) was amended to recognize that the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7).

Rule 9009. Forms

Except as otherwise provided in Rule 3016(d), the ~~The~~ Official Forms prescribed by the Judicial Conference of the

United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code. The forms shall be construed to be consistent with these rules and the Code.

COMMITTEE NOTE

The rule is amended to provide that a plan proponent in a small business chapter 11 case need not use an Official Form of a plan of reorganization and disclosure statement. The use of those forms is optional, and under Rule 3016(d) the proponent may submit a plan and disclosure statement in those cases that does not conform to the Official Forms.

Changes Made After Publication:

No changes were made after publication.

B. Proposed Technical Amendments to Bankruptcy Rules 7012, 7022, 7023.1, and 9024 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference:

The Advisory Committee recommends that the Standing Committee approve the following technical amendments to the Bankruptcy Rules without publication and submit them to the Judicial Conference.

1. *Synopsis of Proposed Technical Amendments.*

(a) **Rule 7012** is amended to conform to the changes made by the Civil Rules Restyling Project.

(b) **Rule 7022** is amended to conform to the changes made by the Civil Rules Restyling Project.

(c) **Rule 7023.1** is amended to conform to the changes made by the Civil Rules Restyling Project.

(d) **Rule 9024** is amended to conform to the changes made by the Civil Rules Restyling Project.

2. *Text of Proposed Technical Amendments to Bankruptcy Rules 7012, 7022, 7023.1, and 9024.*

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 7012. Defenses and Objections — When and How Presented — By Pleading or Motion — Motion for Judgment on the Pleadings

* * * * *

(b) APPLICABILITY OF RULE 12(b)-~~(h)~~ (i) F.R.CIV.P.

Rule 12(b)-~~(h)~~ (i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered

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

on the bankruptcy judge's order except with the express consent of the parties.

COMMITTEE NOTE

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

Rule 7022. Interpleader

Rule 22~~(1)~~(a) F.R.Civ.P. applies in adversary proceedings. This rule supplements – and does not limit – the joinder of parties allowed by Rule 7020.

COMMITTEE NOTE

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

Rule 7023.1. Derivative ~~Proceedings by Shareholders~~ Actions

Rule 23.1 F.R.Civ.P. applies in adversary proceedings.

COMMITTEE NOTE

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

Rule 9024. Relief from Judgment or Order

Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60 ~~(b)~~ (c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330.

COMMITTEE NOTE

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

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