

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.

(Added Apr. 23, 2008, eff. Dec. 1, 2008.)

#### COMMITTEE NOTES ON RULES—2008

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.

#### PART II—OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

#### Rule 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case

(a) APPOINTMENT. At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may order the appointment of an interim trustee under §303(g) of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the petitioning creditors, the United States trustee, and other parties in interest as the court may designate.

(b) BOND OF MOVANT. An interim trustee may not be appointed under this rule unless the movant furnishes a bond in an amount approved by the court, conditioned to indemnify the debtor for costs, attorney's fee, expenses, and damages allowable under §303(i) of the Code.

(c) ORDER OF APPOINTMENT. The order directing the appointment of an interim trustee shall state the reason the appointment is necessary and shall specify the trustee's duties.

(d) TURNOVER AND REPORT. Following qualification of the trustee selected under §702 of the Code, the interim trustee, unless otherwise ordered, shall (1) forthwith deliver to the trustee all the records and property of the estate in possession or subject to control of the interim trustee and, (2) within 30 days thereafter file a final report and account.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rule 201. See also former Chapter X Rule 10-201. In conformity with title 11 of the United States Code, this rule substitutes "interim trustee" for "receiver." Subdivision (a) and (e) of Rule 201 are not included because the provisions contained therein are found in detail in §303(g) of the Code, or they are inconsistent with §701 of the Code. Similarly, the provisions in Rule 201(d) relating to a debtor's counterbond are not included because of their presence in §303(g).

*Subdivision (a)* makes it clear that the court may not on its own motion order the appointment of an interim trustee before an order for relief is entered. Appointment may be ordered only on motion of a party in interest.

*Subdivision (b)* requires those seeking the appointment of an interim trustee to furnish a bond. The bond may be the same one required of petitioning creditors under §303(e) of the Code to indemnify the debtor for damages allowed by the court under §303(i).

*Subdivision (c)* requires that the order specify which duties enumerated in §303(g) shall be performed by the interim trustee. Reference should be made to Rule 2015 for additional duties required of an interim trustee including keeping records and filing periodic reports with the court.

*Subdivision (d)* requires turnover of records and property to the trustee selected under §702 of the Code, after qualification. That trustee may be the interim trustee who becomes the trustee because of the failure of creditors to elect one under §702(d) or the trustee elected by creditors under §702(b), (c).

#### NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

This rule is amended to conform to §303(g) of the Code which provides that the United States trustee appoints the interim trustee. See Rule X-1003. This rule does not apply to the exercise by the court of the power to act sua sponte pursuant to §105(a) of the Code.

#### 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:

(1) the meeting of creditors under §341 or §1104(b) of the Code, which notice, unless the court orders otherwise, shall include the debtor's employer identification number, social security number, and any other federal taxpayer identification number;

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

(3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent;

(4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under §707(a)(3) or §707(b) or is on dismissal of the case for failure to pay the filing fee;

(5) the time fixed to accept or reject a proposed modification of a plan;

(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000;

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); and

(8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan.

(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.

(2) *Notice of Hearing on Compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(6) of this rule shall identify the applicant and the amounts requested.

(3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan pro-

vides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall:

(A) include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction;

(B) describe briefly the nature of the injunction; and

(C) identify the entities that would be subject to the injunction.

(d) **NOTICE TO EQUITY SECURITY HOLDERS.** In a chapter 11 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders held pursuant to §341 of the Code; (3) the hearing on the proposed sale of all or substantially all of the debtor's assets; (4) the hearing on the dismissal or conversion of a case to another chapter; (5) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (6) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (7) the time fixed to accept or reject a proposed modification of a plan.

(e) **NOTICE OF NO DIVIDEND.** In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

(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.

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

(A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and

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

(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.

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

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

(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.

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In a chapter 7 case, after 90 days following the first date set for the meeting of creditors

under §341 of the Code, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed pursuant to this rule shall be mailed to the committees elected under §705 or appointed under §1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected under §705 or appointed under §1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed under §1114 shall receive copies of all notices required by subdivisions (a)(1), (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.

(j) NOTICES TO THE UNITED STATES. Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a written request to receive notices; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case, to the Internal Revenue Service at its address set out in the register maintained under Rule 5003(e) for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or (5) if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

(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.*

(l) NOTICE BY PUBLICATION. The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.

(m) ORDERS DESIGNATING MATTER OF NOTICES. The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

(n) CAPTION. The caption of every notice given under this rule shall comply with Rule 1005. The caption of every notice required to be given by the debtor to a creditor shall include the information required to be in the notice by §342(c) of the Code.

(o) NOTICE OF ORDER FOR RELIEF IN CONSUMER CASE. In a voluntary case commenced by an individual debtor whose debts are primarily consumer debts, the clerk, or some other person as the court may direct, shall give the trustee and all creditors notice by mail of the order for relief within 20 days from the date thereof.

(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.

(As amended Pub. L. 98-91, §2(a), Aug. 30, 1983, 97 Stat. 607; Pub. L. 98-353, title III, §321, July 10, 1984, 98 Stat. 357; Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 23, 2001, eff. Dec. 1, 2001; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 26, 2004, eff. Dec. 1, 2004; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 23, 2008, eff. Dec. 1, 2008.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

Some of the notices required by this rule may be given either by the clerk or as the court may otherwise direct. For example, the court may order the trustee or debtor in possession to transmit one or more of the notices required by this rule, such as, notice of a proposed sale of property. See §363(b) of the Code. When publication of notices is required or desirable, reference should be made to Rule 9008.

Notice of the order for relief is required to be given by §342 of the Code and by subdivision (f)(1) of this rule. That notice may be combined with the notice of the meeting of creditors as indicated in Official Form No. 16, the notice and order of the meeting of creditors.

*Subdivision (a)* sets forth the requirement that 20 days notice be given of the significant events in a case under the Bankruptcy Code. The former Act and Rules provided a ten day notice in bankruptcy and Chapter XI cases, and a 20 day notice in a Chapter X case. This rule generally makes uniform the 20 day notice provision except that subdivision (b) contains a 25 day period for certain events in a chapter 9, 11, or 13 case. Generally, Rule 9006 permits reduction of time periods. Since notice by mail is complete on mailing, the requirement of subdivision (a) is satisfied if the notices are deposited in the mail at least 20 days before the event. See Rule 9006(e). The exceptions referred to in the introductory phrase include the modifications in the notice procedure permitted by subdivision (h) as to non-filing creditors, subdivision (i) as to cases where a committee is functioning, and subdivision (k) where compliance with subdivision (a) is impracticable.

The notice of a proposed sale affords creditors an opportunity to object to the sale and raise a dispute for the court's attention. Section 363(b) of the Code permits the trustee or debtor in possession to sell property, other than in the ordinary course of business, only after notice and hearing. If no objection is raised after notice, §102(1) provides that there need not be an actual hearing. Thus, absent objection, there would be no court involvement with respect to a trustee's sale. Once an objection is raised, only the court may pass on it.

Prior to the Code the court could shorten the notice period for a proposed sale of property or dispense with notice. This subdivision (a), permits the 20 day period to be shortened in appropriate circumstances but the rule does not contain a provision allowing the court to dispense with notice. The rule is thus consistent with the Code, §§363(b) and 102(1)(A) of the Code. See 28 U.S.C. §2075. It may be necessary, in certain circum-

stances, however, to use a method of notice other than mail. Subdivision (a)(2) vests the court with discretion, on cause shown, to order a different method. Reference should also be made to Rule 6004 which allows a different type of notice of proposed sales when the property is of little value.

Notice of the hearing on an application for compensation or reimbursement of expenses totalling \$100 or less need not be given. In chapter 13 cases relatively small amounts are sometimes allowed for post-confirmation services and it would not serve a useful purpose to require advance notice.

*Subdivision (b)* is similar to subdivision (a) but lengthens the notice time to 25 days with respect to those events particularly significant in chapter 9, 11 and 13 cases. The additional time may be necessary to formulate objections to a disclosure statement or confirmation of a plan and preparation for the hearing on approval of the disclosure statement or confirmation. The disclosure statement and hearing thereon is only applicable in chapter 9 cases (§901(a) of the Code), and chapter 11 cases (§1125 of the Code).

*Subdivision (c)* specifies certain matters that should be included in the notice of a proposed sale of property and notice of the hearing on an application for allowances. Rule 6004 fixes the time within which parties in interest may file objections to a proposed sale of property.

*Subdivision (d)* relates exclusively to the notices given to equity security holders in chapter 11 cases. Under chapter 11, a plan may impair the interests of the debtor's shareholders or a plan may be a relatively simple restructuring of unsecured debt. In some cases, it is necessary that equity interest holders receive various notices and in other cases there is no purpose to be served. This subdivision indicates that the court is not mandated to order notices but rather that the matter should be treated with some flexibility. The court may decide whether notice is to be given and how it is to be given. Under §341(b) of the Code, a meeting of equity security holders is not required in each case, only when it is ordered by the court. Thus subdivision (d)(2) requires notice only when the court orders a meeting.

In addition to the notices specified in this subdivision, there may be other events or matters arising in a case as to which equity security holders should receive notice. These are situations left to determination by the court.

*Subdivision (e)*, authorizing a notice of the apparent insufficiency of assets for the payment of any dividend, is correlated with Rule 3002(c)(5), which provides for the issuance of an additional notice to creditors if the possibility of a payment later materializes.

*Subdivision (f)* provides for the transmission of other notices to which no time period applies. Clause (1) requires notice of the order for relief; this complements the mandate of §342 of the Code requiring such notice as is appropriate of the order for relief. This notice may be combined with the notice of the meeting of creditors to avoid the necessity of more than one mailing. See Official Form No. 16, notice of meeting of creditors.

*Subdivision (g)* recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate where notices to the creditor he represents should be addressed. Agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him. It should be noted that Official Forms Nos. 17 and 18 do not include an authorization of the holder of a power of attorney to receive notices for the creditor. Neither these forms nor this rule carries any implication that such an authorization may not be given in a power of attorney or that a request for notices to be addressed to both the creditor or his duly authorized agent may not be filed.

*Subdivision (h)*. After the time for filing claims has expired in a chapter 7 case, creditors who have not filed their claims in accordance with Rule 3002(c) are not entitled to share in the estate except as they may come within the special provisions of §726 of the Code or Rule

3002(c)(6). The elimination of notice to creditors who have no recognized stake in the estate may permit economies in time and expense. Reduction of the list of creditors to receive notices under this subdivision is discretionary. This subdivision does not apply to the notice of the meeting of creditors.

*Subdivision (i)* contains a list of matters of which notice may be given a creditors' committee or to its authorized agent in lieu of notice to the creditors. Such notice may serve every practical purpose of a notice to all the creditors and save delay and expense. *In re Schulte-United, Inc.*, 59 F.2d 553, 561 (8th Cir. 1932).

*Subdivision (j)*. The premise for the requirement that the district director of internal revenue receive copies of notices that all creditors receive in a chapter 11 case is that every debtor is potentially a tax debtor of the United States. Notice to the district director alerts him to the possibility that a tax debtor's estate is about to be liquidated or reorganized and that the debtor may be discharged. When other indebtedness to the United States is indicated, the United States attorney is notified as the person in the best position to protect the interests of the government. In addition, the provision requires notice by mail to the head of any department, agency, or instrumentality of the United States through whose action the debtor became indebted to the United States. This rule is not intended to preclude a local rule from requiring a state or local tax authority to receive some or all of the notices to creditors under these rules.

*Subdivision (k)* specifies two kinds of situations in which notice by publication may be appropriate: (1) when notice by mail is impracticable; and (2) when notice by mail alone is less than adequate. Notice by mail may be impracticable when, for example, the debtor has disappeared or his records have been destroyed and the names and addresses of his creditors are unavailable, or when the number of creditors with nominal claims is very large and the estate to be distributed may be insufficient to defray the costs of issuing the notices. Supplementing notice by mail is also indicated when the debtor's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Rule 9008 applies when the court directs notice by publication under this rule. Neither clause (2) of subdivision (a) nor subdivision (k) of this rule is concerned with the publication of advertisement to the general public of a sale of property of the estate at public auction under Rule 6004(b). See 3 Collier, *Bankruptcy* 522-23 (14th ed. 1971); 4B *id.* 1165-67 (1967); 2 *id.* ¶363.03 (15th ed. 1981).

*Subdivision (m)*. Inclusion in notices to creditors of information as to other names used by the debtor as required by Rule 1005 will assist them in the preparation of their proofs of claim and in deciding whether to file a complaint objecting to the debtor's discharge. Additional names may be listed by the debtor on his statement of affairs when he did not file the petition. The mailing of notices should not be postponed to await a delayed filing of the statement of financial affairs.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

*Subdivision (a)* is amended to provide that notice of a hearing on an application for compensation must be given only when the amount requested is in excess of \$500.

*Subdivision (d)*. A new notice requirement is added as clause (3). When a proposed sale is of all or substantially all of the debtor's assets, it is appropriate that equity security holders be given notice of the proposed sale. The clauses of subdivision (d) are renumbered to accommodate this addition.

*Subdivision (f)*. Clause (7) is eliminated. Mailing of a copy of the discharge order is governed by Rule 4004(g).

*Subdivision (g)* is amended to relieve the clerk of the duty to mail notices to the address shown in a proof of claim when a notice of no dividend has been given pursuant to Rule 2002. This amendment avoids the neces-

sity of the clerk searching proofs of claim which are filed in no dividend cases to ascertain whether a different address is shown.

*Subdivision (n)* was enacted by § 321 of the 1984 amendments.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

*Subdivision (a)(3)* is amended to exclude compromise or settlement agreements concerning adequate protection or which modify or terminate the automatic stay, provide for use of cash collateral, or create a senior or equal lien on collateral to obtain credit. Notice requirements relating to approval of such agreements are governed by Rule 4001(d).

*Subdivision (a)(5)* is amended to include a hearing on dismissal or conversion of a chapter 12 case. This subdivision does not apply when a hearing is not required. It is also amended to avoid the necessity of giving notice to all creditors of a hearing on the dismissal of a consumer debtor's case based on substantial abuse of chapter 7. Such hearings on dismissal under § 707(b) of the Code are governed by Rule 1017(e).

*Subdivision (a)(9)* is added to provide for notice of the time fixed for filing objections and the hearing to consider confirmation of a plan in a chapter 12 case. Section 1224 of the Code requires "expedited notice" of the confirmation hearing in a chapter 12 case and requires that the hearing be concluded not later than 45 days after the filing of the plan unless the time is extended for cause. This amendment establishes 20 days as the notice period. The court may shorten this time on its own motion or on motion of a party in interest. The notice includes both the date of the hearing and the date for filing objections, and must be accompanied by a copy of the plan or a summary of the plan in accordance with Rule 3015(d).

*Subdivision (b)* is amended to delete as unnecessary the references to subdivisions (h) and (i).

*Subdivision (d)* does not require notice to equity security holders in a chapter 12 case. The procedural burden of requiring such notice is outweighed by the likelihood that all equity security holders of a family farmer will be informed of the progress of the case without formal notice. Subdivision (d) is amended to recognize that the United States trustee may convene a meeting of equity security holders pursuant to § 341(b).

*Subdivision (f)(2)* is amended and subdivision (f)(4) is deleted to require notice of any conversion of the case, whether the conversion is by court order or is effectuated by the debtor filing a notice of conversion pursuant to §§ 1208(a) or 1307(a). Subdivision (f)(8), renumbered (f)(7), is amended to include entry of an order confirming a chapter 12 plan. Subdivision (f)(9) is amended to increase the amount to \$1,500.

*Subdivisions (g) and (j)* are amended to delete the words "with the court" and subdivision (i) is amended to delete the words "with the clerk" because these phrases are unnecessary. See Rules 5005(a) and 9001(3).

*Subdivision (i)* is amended to require that the United States trustee receive notices required by subdivision (a)(2), (3) and (7) of this rule notwithstanding a court order limiting such notice to committees and to creditors and equity security holders who request such notices. Subdivision (i) is amended further to include committees elected pursuant to § 705 of the Code and to provide that committees of retired employees appointed in chapter 11 cases receive certain notices.

*Subdivision (k)* is derived from Rule X-1008. The administrative functions of the United States trustee pursuant to 28 U.S.C. § 586(a) and standing to be heard on issues under § 307 and other sections of the Code require that the United States trustee be informed of developments and issues in every case except chapter 9 cases. The rule omits those notices described in subdivision (a)(1) because a meeting of creditors is convened only by the United States trustee, and those notices described in subdivision (a)(4) (date fixed for filing claims against a surplus), subdivision (a)(6) (time fixed to accept or reject proposed modification of a plan),

subdivision (a)(8) (time fixed for filing proofs of claims in chapter 11 cases), subdivision (f)(3) (time fixed for filing claims in chapter 7, 12, and 13 cases), and subdivision (f)(5) (time fixed for filing complaint to determine dischargeability of debt) because these notices do not relate to matters that generally involve the United States trustee. Nonetheless, the omission of these notices does not prevent the United States trustee from receiving such notices upon request. The United States trustee also receives notice of hearings on applications for compensation or reimbursement without regard to the \$500 limitation contained in subdivision (a)(7) of this rule. This rule is intended to be flexible in that it permits the United States trustee in a particular judicial district to request notices in certain categories, and to request not to receive notices in other categories, when the practice in that district makes that desirable.

NOTES OF ADVISORY COMMITTEE ON RULES—1993  
AMENDMENT

*Subdivision (j)* is amended to avoid the necessity of sending an additional notice to the Washington, D.C. address of the Securities and Exchange Commission if the Commission prefers to have notices sent only to a local office. This change also clarifies that notices required to be mailed pursuant to this rule must be sent to the Securities and Exchange Commission only if it has filed a notice of appearance or has filed a written request. Other amendments are stylistic and make no substantive change.

NOTES OF ADVISORY COMMITTEE ON RULES—1996  
AMENDMENT

*Paragraph (a)(4)* is abrogated to conform to the abrogation of Rule 3002(c)(6). The remaining paragraphs of subdivision (a) are renumbered, and references to these paragraphs contained in other subdivisions of this rule are amended accordingly.

*Paragraph (f)(8)* is amended so that a summary of the trustee's final account, which is prepared after distribution of property, does not have to be mailed to the debtor, all creditors, and indenture trustees in a chapter 7 case. Parties are sufficiently protected by receiving a summary of the trustee's final report that informs parties of the proposed distribution of property.

*Subdivision (h)* is amended (1) to provide that an order under this subdivision may not be issued if a notice of no dividend is given pursuant to Rule 2002(e) and the time for filing claims has not expired as provided in Rule 3002(c)(5); (2) to clarify that notices required to be mailed by subdivision (a) to parties other than creditors must be mailed to those entities despite an order issued pursuant to subdivision (h); (3) to provide that if the court, pursuant to Rule 3002(c)(1) or 3002(c)(2), has granted an extension of time to file a proof of claim, the creditor for whom the extension has been granted must continue to receive notices despite an order issued pursuant to subdivision (h); and (4) to delete references to subdivision (a)(4) and Rule 3002(c)(6), which have been abrogated.

Other amendments to this rule are stylistic.

*GAP Report on Rule 2002.* No changes since publication, except for stylistic changes and the correction of a typographical error in the committee note.

NOTES OF ADVISORY COMMITTEE ON RULES—1997  
AMENDMENT

*Paragraph (a)(1)* is amended to include notice of a meeting of creditors convened under § 1104(b) of the Code for the purpose of electing a trustee in a chapter 11 case. The court for cause shown may order the 20-day period reduced pursuant to Rule 9006(c)(1).

*Subdivision (n)* is amended to conform to the 1994 amendment to § 342 of the Code. As provided in § 342(c), the failure of a notice given by the debtor to a creditor to contain the information required by § 342(c) does not invalidate the legal effect of the notice.

*GAP Report on Rule 2002.* No changes to the published draft.

## COMMITTEE NOTES ON RULES—1999 AMENDMENT

Paragraph (a)(4) is amended to conform to the amendments to Rule 1017. If the United States trustee files a motion to dismiss a case for the debtor's failure to file the list of creditors, schedules, or the statement of financial affairs within the time specified in §707(a)(3), the amendments to this rule and to Rule 1017 eliminate the requirement that all creditors receive notice of the hearing.

Paragraph (a)(4) is amended further to conform to Rule 1017(b), which requires that notice of the hearing on dismissal of a case for failure to pay the filing fee be served on only the debtor and the trustee.

Paragraph (f)(2) is amended to provide for notice of the suspension of proceedings under §305.

*GAP Report on Rule 2002.* No changes since publication.

## COMMITTEE NOTES ON RULES—2000 AMENDMENT

Paragraph (a)(6) is amended to increase the dollar amount from \$500 to \$1,000. The amount was last amended in 1987, when it was changed from \$100 to \$500. The amendment also clarifies that the notice is required only if a particular entity is requesting more than \$1,000 as compensation or reimbursement of expenses. If several professionals are requesting compensation or reimbursement, and only one hearing will be held on all applications, notice under paragraph (a)(6) is required only with respect to the entities that have requested more than \$1,000. If each applicant requests \$1,000 or less, notice under paragraph (a)(6) is not required even though the aggregate amount of all applications to be considered at the hearing is more than \$1,000.

If a particular entity had filed prior applications or had received compensation or reimbursement of expenses at an earlier time in the case, the amounts previously requested or awarded are not considered when determining whether the present application exceeds \$1,000 for the purpose of applying this rule.

*GAP Report on Rule 2002(a).* No changes since publication.

## COMMITTEE NOTES ON RULES—2001 AMENDMENT

Subdivision (c)(3) is added to assure that parties given notice of a hearing to consider confirmation of a plan under subdivision (b) are given adequate notice of an injunction provided for in the plan if it would enjoin conduct that is not otherwise enjoined by operation of the Code. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

The notice requirement of subdivision (c)(3) is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against acts to collect a discharged debt from the debtor, Rule 2002(c)(3) would not apply because that conduct would be enjoined under §524(a)(2) upon the debtor's discharge. But if a plan provides that creditors will be enjoined from asserting claims against persons who are not debtors in the case, the notice of the confirmation hearing must include the information required under Rule 2002(c)(3) because that conduct would not be enjoined by operation of the Code. See §524(e).

The requirement that the notice identify the entities that would be subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the notice may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient for the notice to identify the entities as "all creditors of the debtor" and for the notice to be published in a manner that satisfies due process requirements.

Subdivision (g) has been revised to clarify that where a creditor or indenture trustee files both a proof of claim which includes a mailing address and a separate request designating a mailing address, the last paper

filed determines the proper address. The amendments also clarify that a request designating a mailing address is effective only with respect to a particular case.

Under Rule 2002(g), a duly filed proof of claim is considered a request designating a mailing address if a notice of no dividend has been given under Rule 2002(e), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(5). A duly filed proof of interest is considered a request designating a mailing address of an equity security holder.

Rule 2002(g)(3) is added to assure that notices to an infant or incompetent person under this rule are mailed to the appropriate guardian or other legal representative. Under Rule 1007(m), if the debtor knows that a creditor is an infant or incompetent person, the debtor is required to include in the list and schedule of creditors the name and address of the person upon whom process would be served in an adversary proceeding in accordance with Rule 7004(b)(2). If the infant or incompetent person, or another person, files a request or proof of claim designating a different name and mailing address, the notices would have to be mailed to both names and addresses until the court resolved the issue as to the proper mailing address.

The other amendments to Rule 2002(g) are stylistic.

*Changes Made After Publication and Comments.* In Rule 2002(c)(3), the word "highlighted" was replaced with "underlined" because highlighted documents are difficult to scan electronically for inclusion in the clerks' files. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of any injunction provided for in a plan are substantive matters beyond the scope of the rules.

In Rule 2002(g), no changes were made.

## COMMITTEE NOTES ON RULES—2003 AMENDMENT

Subdivision (a)(1) of the rule is amended to direct the clerk or other person giving notice of the §341 or §1104(b) meeting of creditors to include the debtor's full social security number on the notice. Official Form 9, the form of the notice of the meeting of creditors that will become a part of the court's file in the case, will include only the last four digits of the debtor's social security number. This rule, however, directs the clerk to include the full social security number on the notice that is served on the creditors and other identified parties, unless the court orders otherwise in a particular case. This will enable creditors and other parties in interest who are in possession of the debtor's social security number to verify the debtor's identity and proceed accordingly. The filed Official Form 9, however, will not include the debtor's full social security number. This will prevent the full social security number from becoming a part of the court's file in the case, and the number will not be included in the court's electronic records. Creditors who already have the debtor's social security number will be able to verify the existence of a case under the debtor's social security number, but any person searching the electronic case files without the number will not be able to acquire the debtor's social security number.

*Changes Made After Publication and Comments.* The rule amendment was made in response to concerns of both private creditors and taxing authorities that truncating the social security number of a debtor to the last four digits would unduly hamper their ability to identify the debtor and govern their actions accordingly. Therefore, the Advisory Committee amended Rule 2002 to require the clerk to include the debtor's full social security number on the notice informing creditors of the §341 meeting and other significant deadlines in the case. This is essentially a continuation of the practice under the current rules, and the amendment is necessary because of the amendment to Rule 1005 that restricts publication of the social security number on the caption of the petition to the final four digits of the number.

## COMMITTEE NOTES ON RULES—2004 AMENDMENT

The rule is amended to reflect that the structure of the Internal Revenue Service no longer includes a Dis-

trict Director. Thus, rather than sending notice to the District Director, the rule now requires that the notices be sent to the location designated by the Service and set out in the register of addresses maintained by the clerk under Rule 5003(e). The other change is stylistic.

#### COMMITTEE NOTES ON RULES—2005 AMENDMENT

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

The business of many entities is national in scope, and technology currently exists to direct the transmission of notice (both electronically and in paper form) to those entities in an accurate and much more efficient manner than by sending individual notices to the same creditor by separate mailings. The rule authorizes an entity and a notice provider to determine the manner of the service as well as to set the address or addresses to which the notices must be sent. For example, they could agree that all notices sent by the notice provider to the entity must be sent to a single, nationwide electronic or postal address. They could also establish local or regional addresses to which notices would be sent in matters pending in specific districts. Since the entity and notice provider also can agree on the date of the commencement of service under the agreement, there is no need to set a date in the rule after which notices would have to be sent to the address or addresses that the entity establishes. Furthermore, since the entity supplies the address to the notice provider, use of that address is conclusively presumed to be proper. Nonetheless, if that address is not used, the notice still may be effective if the notice is otherwise effective under applicable law. This is the same treatment given under Rule 5003(e) to notices sent to governmental units at addresses other than those set out in that register of addresses.

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

*Changes Made After Publication and Comment.* No changes since publication.

#### COMMITTEE NOTES ON RULES—2008 AMENDMENT

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 chap-

ter 11, 12, or 13 case that there is no reasonable cause to believe that §522(g) 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.

#### REFERENCES IN TEXT

The Securities Investor Protection Act, referred to in subd. (k), probably means the Securities Investor Protection Act of 1970, Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B-1 (§78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

#### AMENDMENT BY PUBLIC LAW

1984—Subd. (n). Pub. L. 98-353 added subd. (n).  
1983—Subd. (f). Pub. L. 98-91 inserted ", or some other person as the Court may direct," after "clerk".

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Section 1 of Pub. L. 98-91 provided: "That rule 2002(f) of the Bankruptcy Rules, as proposed by the United States Supreme Court in the order of April 25, 1983, of the Court, shall take effect on August 1, 1983, except as otherwise provided in section 2 [amending subd. (f) of this rule and enacting a provision set out as a note below]."

Section 2(b) of Pub. L. 98-91 provided that: "The amendment made by subsection (a) [amending subd. (f) of this rule] shall take effect on August 1, 1983."

### 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 liq-

uidation 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.

#### (b) ORDER OF MEETING.

(1) *Meeting of Creditors.* The United States trustee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a creditors' committee and, if the case is not under subchapter V of chapter 7, the election of a trustee. The presiding officer shall have the authority to administer oaths.

(2) *Meeting of Equity Security Holders.* If the United States trustee convenes a meeting of equity security holders pursuant to §341(b) of the Code, the United States trustee shall fix a date for the meeting and shall preside.

(3) *Right To Vote.* In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to §702(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. A creditor of a partnership may file a proof of claim or writing evidencing a right to vote for the trustee for the estate of the general partner notwithstanding that a trustee for the estate of the partnership has previously qualified. In the event of an objection to the amount or allowability of a claim for the purpose of voting, unless the court orders otherwise, the United States trustee shall tabulate the votes for each alternative presented by the dispute and, if resolution of such dispute is necessary to determine the result of the election, the tabulations for each alternative shall be reported to the court.

(c) RECORD OF MEETING. Any examination under oath at the meeting of creditors held pursuant to §341(a) of the Code shall be recorded verbatim by the United States trustee using electronic sound recording equipment or other means of recording, and such record shall be preserved by the United States trustee and available for public access until two years after the conclusion of the meeting of creditors. Upon re-

quest of any entity, the United States trustee shall certify and provide a copy or transcript of such recording at the entity's expense.

(d) REPORT OF ELECTION AND RESOLUTION OF DISPUTES IN A CHAPTER 7 CASE.

(1) *Report of Undisputed Election.* In a chapter 7 case, if the election of a trustee or a member of a creditors' committee is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the person or entity elected and a statement that the election is undisputed.

(2) *Disputed Election.* If 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. No later than the date on which the report is filed, the United States trustee shall mail a copy of the report to any party in interest that has made a request to receive a copy of the report. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. Unless a motion for the resolution of the dispute is filed no later than 10 days after the United States trustee files a report of a disputed election for trustee, the interim trustee shall serve as trustee in the case.

(e) ADJOURNMENT. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice.

(f) SPECIAL MEETINGS. The United States trustee may call a special meeting of creditors on request of a party in interest or on the United States trustee's own initiative.

(g) FINAL MEETING. If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed \$1,500, the clerk shall mail a summary of the trustee's final account to the creditors with a notice of the meeting, together with a statement of the amount of the claims allowed. The trustee shall attend the final meeting and shall, if requested, report on the administration of the estate.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 26, 1999, eff. Dec. 1, 1999; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 341(a) of the Code requires a meeting of creditors in a chapter 7, 11 or 13 case, and §341(b) permits the court to order a meeting of equity security holders. A major change from prior law, however, prohibits the judge from attending or presiding over the meeting. Section 341(c).

This rule does not apply either in a case for the reorganization of a railroad or for the adjustment of debts of a municipality. Sections 1161 and 901 render §§341 and 343 inapplicable in these types of cases. Section 341 sets the requirement for a meeting of creditors and §343 provides for the examination of the debtor.

*Subdivision (a).* The meeting is to be held between 20 and 40 days after the date of the order for relief. In a voluntary case, the date of the order for relief is the date of the filing of the petition (§301 of the Code); in an involuntary case, it is the date of an actual order (§303(i) of the Code).

*Subdivision (b)* provides flexibility as to who will preside at the meeting of creditors. The court may designate a person to serve as presiding officer, such as the interim trustee appointed under §701 of the Code. If the court does not designate anyone, the clerk will preside. In either case, creditors may elect a person of their own choosing. In any event, the clerk may remain to record the proceedings and take appearances. Use of the clerk is not contrary to the legislative policy of §341(c). The judge remains insulated from any information coming forth at the meeting and any information obtained by the clerk must not be relayed to the judge.

Although the clerk may preside at the meeting, the clerk is not performing any kind of judicial role, nor should the clerk give any semblance of performing such a role. It would be pretentious for the clerk to ascend the bench, don a robe or be addressed as "your honor". The clerk should not appear to parties or others as any type of judicial officer.

In a chapter 11 case, if a committee of unsecured creditors has been appointed pursuant to §1102(a)(1) of the Code and a chairman has been selected, the chairman will preside or a person, such as the attorney for the committee, may be designated to preside by the chairman.

Since the judge must fix the bond of the trustee but cannot be present at the meeting, the rule allows the creditors to recommend the amount of the bond. They should be able to obtain relevant information concerning the extent of assets of the debtor at the meeting.

Paragraph (1) authorizes the presiding officer to administer oaths. This is important because the debtor's examination must be under oath.

Paragraph (3) of subdivision (b) has application only in a chapter 7 case. That is the only type of case under the Code that permits election of a trustee or committee. In all other cases, no vote is taken at the meeting of creditors. If it is necessary for the court to make a determination with respect to a claim, the meeting may be adjourned until the objection or dispute is resolved.

The second sentence recognizes that partnership creditors may vote for a trustee of a partner's estate along with the separate creditors of the partner. Although §723(c) gives the trustee of a partnership a claim against a partner's estate for the full amount of partnership creditors' claims allowed, the purpose and function of this provision are to simplify distribution and prevent double proof, not to disfranchise partnership creditors in electing a trustee of an estate against which they hold allowable claims.

*Subdivision (c)* requires minutes and a record of the meeting to be maintained by the presiding officer. A verbatim record must be made of the debtor's examination but the rule is flexible as to the means used to record the examination.

*Subdivision (d)* recognizes that the court must be informed immediately about the election or nonelection of a trustee in a chapter 7 case. Pursuant to Rule 2008, the clerk officially informs the trustee of his election or appointment and how he is to qualify. The presiding person has no authority to resolve a disputed election.

For purposes of expediency, the results of the election should be obtained for each alternative presented by the dispute and immediately reported to the court. Thus, when an interested party presents the dispute to the court, its prompt resolution by the court will determine the dispute and a new or adjourned meeting to conduct the election may be avoided. The clerk is not an interested party.

A creditors' committee may be elected only in a chapter 7 case. In chapter 11 cases, a creditors' committee is appointed pursuant to §1102.

While a final meeting is not required, Rule 2002(f)(10) provides for the trustee's final account to be sent to creditors.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

*Subdivision (a).* Many courts schedule meetings of creditors at various locations in the district. Because

the clerk must schedule meetings at those locations, an additional 20 days for scheduling the meetings is provided under the amended rule.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

The amendment to subdivision (a) relating to the calling of the meeting of creditors in a chapter 12 case is consistent with the expedited procedures of chapter 12. Subdivision (a) is also amended to clarify that the United States trustee does not call a meeting of creditors in a chapter 9 case. Pursuant to §901(a) of the Code, §341 is inapplicable in chapter 9 cases. The other amendments to subdivisions (a), (b)(1), and (b)(2) and the additions of subdivisions (f) and (g) are derived from Rule X-1006 and conform to the 1986 amendments to §341 of the Code. The second sentence of subdivision (b)(3) is amended because Rule 2009(e) is abrogated. Although the United States trustee fixes the date for the meeting, the clerk of the bankruptcy court transmits the notice of the meeting unless the court orders otherwise, as prescribed in Rule 2002(a)(1).

Pursuant to §702 and §705 of the Code, creditors may elect a trustee and a committee in a chapter 7 case. Subdivision (b) of this rule provides that the United States trustee shall preside over any election that is held under those sections. The deletion of the last sentence of subdivision (b)(1) does not preclude creditors from recommending to the United States trustee the amount of the trustee's bond when a trustee is elected. Trustees and committees are not elected in chapter 11, 12, and 13 cases.

If an election is disputed, the United States trustee shall not resolve the dispute. For purposes of expediency, the United States trustee shall tabulate the results of the election for each alternative presented by the dispute. However, if the court finds that such tabulation is not feasible under the circumstances, the United States trustee need not tabulate the votes. If such tabulation is feasible and if the disputed vote or votes would affect the result of the election, the tabulations of votes for each alternative presented by the dispute shall be reported to the court. If a motion is made for resolution of the dispute in accordance with subdivision (d) of this rule, the court will determine the issue and another meeting to conduct the election may not be necessary.

*Subdivisions (f) and (g)* are derived from Rule X-1006(d) and (e), except that the amount is increased to \$1,500 to conform to the amendment to Rule 2002(f).

NOTES OF ADVISORY COMMITTEE ON RULES—1993  
AMENDMENT

*Subdivision (a)* is amended to extend by ten days the time for holding the meeting of creditors in a chapter 13 case. This extension will provide more flexibility for scheduling the meeting of creditors. Other amendments are stylistic and make no substantive change.

COMMITTEE NOTES ON RULES—1999 AMENDMENT

*Subdivision (d)* is amended to require the United States trustee to mail a copy of a report of a disputed election to any party in interest that has requested a copy of it. Also, if the election is for a trustee, the rule as amended will give a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute.

The substitution of "United States trustee" for "presiding officer" is stylistic. Section 341(a) of the Code provides that the United States trustee shall preside at the meeting of creditors. Other amendments are designed to conform to the style of Rule 2007.1(b)(3) regarding the election of a trustee in a chapter 11 case. *GAP Report on Rule 2003*. No changes since publication.

COMMITTEE NOTES ON RULES—2003 AMENDMENT

The rule is amended to reflect the enactment of subchapter V of chapter 7 of the Code governing multi-

lateral clearing organization liquidations. Section 782 of the Code provides that the designation of a trustee or alternative trustee for the case is made by the Federal Reserve Board. Therefore, the meeting of creditors in those cases cannot include the election of a trustee.

*Changes Made After Publication and Comments*. No changes since publication.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

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 2004. Examination**

(a) **EXAMINATION ON MOTION**. On motion of any party in interest, the court may order the examination of any entity.

(b) **SCOPE OF EXAMINATION**. The examination of an entity under this rule or of the debtor under §343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) **COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS**. The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

(d) **TIME AND PLACE OF EXAMINATION OF DEBTOR**. The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) **MILEAGE**. An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first peti-

tion commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

*Subdivision (a)* of this rule is derived from former Bankruptcy Rule 205(a). See generally 2 Collier, *Bankruptcy* ¶¶ 343.02, 343.08, 343.13 (15th ed. 1981). It specifies the manner of moving for an examination. The motion may be heard *ex parte* or it may be heard on notice.

*Subdivision (b)* is derived from former Bankruptcy Rules 205(d) and 11-26.

*Subdivision (c)* specifies the mode of compelling attendance of a witness or party for an examination and for the production of evidence under this rule. The subdivision is substantially declaratory of the practice that had developed under §21a of the Act. See 2 Collier, *supra* ¶ 343.11.

This subdivision will be applicable for the most part to the examination of a person other than the debtor. The debtor is required to appear at the meeting of creditors for examination. The word “person” includes the debtor and this subdivision may be used if necessary to obtain the debtor’s attendance for examination.

*Subdivision (d)* is derived from former Bankruptcy Rule 205(f) and is not a limitation on subdivision (c). Any person, including the debtor, served with a subpoena within the range of a subpoena must attend for examination pursuant to subdivision (c). Subdivision (d) applies only to the debtor and a subpoena need not be issued. There are no territorial limits on the service of an order on the debtor. See, e.g., *In re Totem Lodge & Country Club, Inc.*, 134 F. Supp. 158 (S.D.N.Y. 1955).

*Subdivision (e)* is derived from former Bankruptcy Rule 205(g). The lawful mileage and fee for attendance at a United States court as a witness are prescribed by 28 U.S.C. §1821.

*Definition of debtor.* The word “debtor” as used in this rule includes the persons specified in the definition in Rule 9001(5).

*Spousal privilege.* The limitation on the spousal privilege formerly contained in §21a of the Act is not carried over in the Code. For privileges generally, see Rule 501 of the Federal Rules of Evidence made applicable in cases under the Code by Rule 1101 thereof.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to allow the examination in a chapter 12 case to cover the same matters that may be covered in an examination in a chapter 11 or 13 case.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

*Subdivision (c)* is amended to clarify that an examination ordered under Rule 2004(a) may be held outside the district in which the case is pending if the subpoena is issued by the court for the district in which the examination is to be held and is served in the manner provided in Rule 45 F. R. Civ. P., made applicable by Rule 9016.

The subdivision is amended further to clarify that, in addition to the procedures for the issuance of a subpoena set forth in Rule 45 F. R. Civ. P., an attorney may issue and sign a subpoena on behalf of the court for the district in which a Rule 2004 examination is to be held if the attorney is authorized to practice, even if admitted *pro hac vice*, either in the court in which the case is pending or in the court for the district in which the examination is to be held. This provision supplements the procedures for the issuance of a subpoena set forth in Rule 45(a)(3)(A) and (B) F. R. Civ. P. and is consistent with one of the purposes of the 1991 amendments to Rule 45, to ease the burdens of interdistrict law practice.

*Changes Made After Publication and Comments.* The typographical error was corrected, but no other changes were made.

**Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination**

(a) ORDER TO COMPEL ATTENDANCE FOR EXAMINATION. On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor’s residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor’s obedience to all orders made in reference thereto.

(b) REMOVAL. Whenever any order to bring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may be taken into custody under the order and removed in accordance with the following rules:

(1) If the debtor is taken into custody under the order at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order.

(2) If the debtor is taken into custody under the order at a place 100 miles or more from the place of issue of the order, the debtor shall be brought without unnecessary delay before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the magistrate judge, bankruptcy judge, or district judge finds that an order has issued under this rule and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate judge, bankruptcy judge, or district judge shall order removal, and the person in custody shall be released on conditions ensuring prompt appearance before the court that issued the order to compel the attendance.

(c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18, U.S.C., §3146(a) and (b).

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Bankruptcy Rule 206. The rule requires the debtor to be examined as soon as possible if allegations of the movant for compulsory examination under this rule are found to be true after a hearing. Subdivision (b) includes in paragraphs (1) and

(2) provisions adapted from subdivisions (a) and (b) of Rule 40 of the Federal Rules of Criminal Procedure, which governs the handling of a person arrested in one district on a warrant issued in another. Subdivision (c) incorporates by reference the features of subdivisions (a) and (b) of 18 U.S.C. §3146, which prescribe standards, procedures and factors to be considered in determining conditions of release of accused persons in noncapital cases prior to trial. The word “debtor” as used in this rule includes the persons named in Rule 9001(5).

The affidavit required to be submitted in support of the motion may be subscribed by the unsworn declaration provided for in 28 U.S.C. §1746.

NOTES OF ADVISORY COMMITTEE ON RULES—1993  
AMENDMENT

*Subdivision (b)(2)* is amended to conform to §321 of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, which changed the title of “United States magistrate” to “United States magistrate judge.” Other amendments are stylistic and make no substantive change.

**Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases**

(a) **APPLICABILITY.** This rule applies only in a liquidation case pending under chapter 7 of the Code.

(b) **DEFINITIONS.**

(1) *Proxy.* A proxy is a written power of attorney authorizing any entity to vote the claim or otherwise act as the owner’s attorney in fact in connection with the administration of the estate.

(2) *Solicitation of Proxy.* The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the debtor.

(c) **AUTHORIZED SOLICITATION.**

(1) A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee elected pursuant to §705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under §702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over \$500 or the 100 creditors having the largest claims had at least five days notice in writing and of which meeting written minutes were kept and are available reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition.

(2) A proxy may be solicited only in writing.

(d) **SOLICITATION NOT AUTHORIZED.** This rule does not permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any custodian; (3) by the interim trustee or by or on behalf of any entity not qualified

to vote under §702(a) of the Code; (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.

(e) **DATA REQUIRED FROM HOLDERS OF MULTIPLE PROXIES.** At any time before the voting commences at any meeting of creditors pursuant to §341(a) of the Code, or at any other time as the court may direct, a holder of two or more proxies shall file and transmit to the United States trustee a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including:

(1) a copy of the solicitation;

(2) identification of the solicitor, the forwarder, if the forwarder is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other. If the solicitor, forwarder, or proxyholder is an association, there shall also be included a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. If the solicitor, forwarder, or proxyholder is a committee of creditors, the statement shall also set forth the date and place the committee was organized, that the committee was organized in accordance with clause (B) or (C) of paragraph (c)(1) of this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority;

(3) a statement that no consideration has been paid or promised by the proxyholder for the proxy;

(4) a statement as to whether there is any agreement and, if so, the particulars thereof, between the proxyholder and any other entity for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any entity, other than a member or regular associate of the proxyholder’s law firm, which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(5) if the proxy was solicited by an entity other than the proxyholder, or forwarded to the holder by an entity who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised for the proxy, and whether there is any agreement, and, if so, the particulars thereof, between the solicitor or forwarder and any other entity for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any entity other than a member or regular associate of the solicitor’s or forwarder’s law firm which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(6) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member as to the amount and source of any consideration paid or to be paid to such member in connection with the case other than by way of dividend on the member's claim.

(f) ENFORCEMENT OF RESTRICTIONS ON SOLICITATION. On motion of any party in interest or on its own initiative, the court may determine whether there has been a failure to comply with the provisions of this rule or any other impropriety in connection with the solicitation or voting of a proxy. After notice and a hearing the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other appropriate action.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is a comprehensive regulation of solicitation and voting of proxies in liquidation cases. It is derived from former Bankruptcy Rule 208. The rule applies only in chapter 7 cases because no voting occurs, other than on a plan, in a chapter 11 case. Former Bankruptcy Rule 208 did not apply to solicitations of acceptances of plans.

Creditor control was a basic feature of the Act and is continued, in part, by the Code. Creditor democracy is perverted and the congressional objective frustrated, however, if control of administration falls into the hands of persons whose principal interest is not in what the estate can be made to yield to the unsecured creditors but in what it can yield to those involved in its administration or in other ulterior objectives.

*Subdivision (b).* The definition of proxy in the first paragraph of subdivision (b) is derived from former Bankruptcy Rule 208.

*Subdivision (c).* The purpose of the rule is to protect creditors against loss of control of administration of their debtors' estates to holders of proxies having interests that differ from those of the creditors. The rule does not prohibit solicitation but restricts it to those who were creditors at the commencement of the case or their freely and fairly selected representatives. The special role occupied by credit and trade associations is recognized in the last clause of subdivision (c)(1). On the assumption that members or subscribers may have affiliated with an association in part for the purpose of obtaining its services as a representative in liquidation proceedings, an established association is authorized to solicit its own members, or its regular customers or clients, who were creditors on the date of the filing of the petition. Although the association may not solicit nonmembers or nonsubscribers for proxies, it may sponsor a meeting of creditors at which a committee entitled to solicit proxies may be selected in accordance with clause (C) of subdivision (c)(1).

Under certain circumstances, the relationship of a creditor, creditors' committee, or association to the estate or the case may be such as to warrant rejection of any proxy solicited by such a person or group. Thus a person who is forbidden by the Code to vote his own claim should be equally disabled to solicit proxies from creditors. Solicitation by or on behalf of the debtor has been uniformly condemned, e.g., *In re White*, 15 F.2d 371 (9th Cir. 1926), as has solicitation on behalf of a preferred creditor, *Matter of Law*, 13 Am.B.R. 650 (S.D. Ill. 1905). The prohibition on solicitation by a receiver or his attorney made explicit by General Order 39 has been collaterally supported by rulings rejecting proxies solicited by a receiver in equity, *In re Western States Bldg.-Loan Ass'n*, 54 F.2d 415 (S.D. Cal. 1931), and by an assignee for the benefit of creditors, *Lines v. Falstaff Brewing Co.*, 233 F.2d 927 (9th Cir. 1956).

*Subdivision (d)* prohibits solicitation by any person or group having a relationship described in the preceding paragraph. It also makes no exception for attorneys or transferees of claims for collection. The rule does not undertake to regulate communications between an attorney and his regular client or between an attorney and a creditor who has asked the attorney to represent him in a proceeding under the Code, but any other communication by an attorney or any other person or group requesting a proxy from the owner of a claim constitutes a regulated solicitation. Solicitation by an attorney of a proxy from a creditor who was not a client prior to the solicitation is objectionable not only as unethical conduct as recognized by such cases as *In the Matter of Darland Company*, 184 F. Supp. 760 (S.D. Iowa 1960) but also and more importantly because the practice carries a substantial risk that administration will fall into the hands of those whose interest is in obtaining fees from the estate rather than securing dividends for creditors. The same risk attaches to solicitation by the holder of a claim for collection only.

*Subdivision (e).* The regulation of solicitation and voting of proxies is achieved by the rule principally through the imposition of requirements of disclosure on the holders of two or more proxies. The disclosures must be made to the clerk before the meeting at which the proxies are to be voted to afford the clerk or a party in interest an opportunity to examine the circumstances accompanying the acquisition of the proxies in advance of any exercise of the proxies. In the light of the examination the clerk or a party in interest should bring to the attention of the judge any question that arises and the judge may permit the proxies that comply with the rule to be voted and reject those that do not unless the holders can effect or establish compliance in such manner as the court shall prescribe. The holders of single proxies are excused from the disclosure requirements because of the insubstantiality of the risk that such proxies have been solicited, or will be voted, in an interest other than that of general creditors.

Every holder of two or more proxies must include in the submission a verified statement that no consideration has been paid or promised for the proxy, either by the proxyholder or the solicitor or any forwarder of the proxy. Any payment or promise of consideration for a proxy would be conclusive evidence of a purpose to acquire control of the administration of an estate for an ulterior purpose. The holder of multiple proxies must also include in the submission a verified statement as to whether there is any agreement by the holder, the solicitor, or any forwarder of the proxy for the employment of any person in the administration of an estate or for the sharing of any compensation allowed in connection with the administration of the estate. The provisions requiring these statements implement the policy of the Code expressed in §504 as well as the policy of this rule to deter the acquisition of proxies for the purpose of obtaining a share in the outlays for administration. Finally the facts as to any consideration moving or promised to any member of a committee which functions as a solicitor, forwarder, or proxyholder must be disclosed by the proxyholder. Such information would be of significance to the court in evaluating the purpose of the committee in obtaining, transmitting, or voting proxies.

*Subdivision (f)* has counterparts in the local rules referred to in the Advisory Committee's Note to former Bankruptcy Rule 208. Courts have been accorded a wide range of discretion in the handling of disputes involving proxies. Thus the referee was allowed to reject proxies and to proceed forthwith to hold a scheduled election at the same meeting. E.g., *In re Portage Wholesale Co.*, 183 F.2d 959 (7th Cir. 1950); *In re McGill*, 106 Fed. 57 (6th Cir. 1901); *In re Deena Woolen Mills, Inc.*, 114 F. Supp. 260, 273 (D. Me. 1953); *In re Finlay*, 3 Am.B.R. 738 (S.D.N.Y. 1900). The bankruptcy judge may postpone an election to permit a determination of issues presented by a dispute as to proxies and to afford those creditors whose proxies are rejected an opportunity to give new

proxies or to attend an adjourned meeting to vote their own claims. *Cf. In the Matter of Lenrick Sates, Inc.*, 369 F.2d 439, 442–43 (3d Cir.), cert. denied, 389 U.S. 822 (1967); *In the Matter of Construction Supply Corp.* 221 F. Supp. 124, 128 (E.D. Va. 1963). This rule is not intended to restrict the scope of the court's discretion in the handling of disputes as to proxies.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to give the United States trustee information in connection with proxies so that the United States trustee may perform responsibilities as presiding officer at the §341 meeting of creditors. See Rule 2003.

The words “with the clerk” are deleted as unnecessary. See Rules 5005(a) and 9001(3).

**Rule 2007. Review of Appointment of Creditors' Committee Organized Before Commencement of the Case**

(a) MOTION TO REVIEW APPOINTMENT. If a committee appointed by the United States trustee pursuant to §1102(a) of the Code consists of the members of a committee organized by creditors before the commencement of a chapter 9 or chapter 11 case, on motion of a party in interest and after a hearing on notice to the United States trustee and other entities as the court may direct, the court may determine whether the appointment of the committee satisfies the requirements of §1102(b)(1) of the Code.

(b) SELECTION OF MEMBERS OF COMMITTEE. The court may find that a committee organized by unsecured creditors before the commencement of a chapter 9 or chapter 11 case was fairly chosen if:

(1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under §702(a) of the Code and were present in person or represented at a meeting of which all creditors having unsecured claims of over \$1,000 or the 100 unsecured creditors having the largest claims had at least five days notice in writing, and of which meeting written minutes reporting the names of the creditors present or represented and voting and the amounts of their claims were kept and are available for inspection;

(2) all proxies voted at the meeting for the elected committee were solicited pursuant to Rule 2006 and the lists and statements required by subdivision (e) thereof have been transmitted to the United States trustee; and

(3) the organization of the committee was in all other respects fair and proper.

(c) FAILURE TO COMPLY WITH REQUIREMENTS FOR APPOINTMENT. After a hearing on notice pursuant to subdivision (a) of this rule, the court shall direct the United States trustee to vacate the appointment of the committee and may order other appropriate action if the court finds that such appointment failed to satisfy the requirements of §1102(b)(1) of the Code.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 1102(b)(1) of the Code permits the court to appoint as the unsecured creditors' committee, the committee that was selected by creditors before the order for relief. This provision recognizes the propriety of

continuing a “prepetition” committee in an official capacity. Such a committee, however, must be found to have been fairly chosen and representative of the different kinds of claims to be represented.

*Subdivision (a)* does not necessarily require a hearing but does require a party in interest to bring to the court's attention the fact that a prepetition committee had been organized and should be appointed. An application would suffice for this purpose. Party in interest would include the committee, any member of the committee, or any of its agents acting for the committee. Whether or not notice of the application should be given to any other party is left to the discretion of the court.

*Subdivision (b)* implements §1102(b)(1). The Code provision allows the court to appoint, as the official §1102(a) committee, a “prepetition” committee if its members were fairly chosen and the committee is representative of the different kinds of claims. This subdivision of the rule indicates some of the factors the court may consider in determining whether the requirements of §1102(b)(1) have been satisfied. In effect, the subdivision provides various factors which are similar to those set forth in Rule 2006 with respect to the solicitation and voting of proxies in a chapter 7 liquidation case.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

The rule is amended to conform to the 1984 amendments to §1102(b)(1) of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to conform to the 1986 amendments to §1102(a). The United States trustee appoints committees pursuant to §1102 in chapter 11 cases. Section 1102 is applicable in chapter 9 cases pursuant to §901(a).

Although §1102(b)(1) of the Code permits the United States trustee to appoint a prepetition committee as the statutory committee if its members were fairly chosen and it is representative of the different kinds of claims to be represented, the amendment to this rule provides a procedure for judicial review of the appointment. The factors that may be considered by the court in determining whether the committee was fairly chosen are not new. A finding that a prepetition committee has not been fairly chosen does not prohibit the appointment of some or all of its members to the creditors' committee. Although this rule deals only with judicial review of the appointment of prepetition committees, it does not preclude judicial review under Rule 2020 regarding the appointment of other committees.

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

(a) ORDER TO APPOINT TRUSTEE OR EXAMINER. In a chapter 11 reorganization case, a motion for an order to appoint a trustee or an examiner under §1104(a) or §1104(c) of the Code shall be made in accordance with Rule 9014.

(b) ELECTION OF TRUSTEE.

(1) *Request for an Election.* A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States trustee in accordance with Rule 5005 within the time prescribed by §1104(b) of the Code. Pending court approval of the person elected, 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.

(2) *Manner of Election and Notice.* An election of a trustee under §1104(b) of the Code shall be conducted in the manner provided in Rules

2003(b)(3) and 2006. Notice of the meeting of creditors convened under §1104(b) shall be given as provided in Rule 2002. The United States trustee shall preside at the meeting. A proxy for the purpose of voting in the election may be solicited only by a committee of creditors appointed under §1102 of the Code or by any other party entitled to solicit a proxy pursuant to Rule 2006.

(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.

(Added Apr. 30, 1991, eff. Aug. 1, 1991; amended Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1991

This rule is added to implement the 1986 amendments to §1104 of the Code regarding the appointment of a trustee or examiner in a chapter 11 case. A motion for an order to appoint a trustee or examiner is a contested matter. Although the court decides whether the appointment is warranted under the particular facts of the case, it is the United States trustee who makes the appointment pursuant to §1104(c) of the Code. The appointment is subject to approval of the court, however, which may be obtained by application of the United States trustee. Section 1104(c) of the Code requires that the appointment be made after consultation with parties in interest and that the person appointed be disinterested.

The requirement that connections with the United States trustee or persons employed in the United States trustee's office be revealed is not intended to enlarge the definition of "disinterested person" in §101(13) of the Code, to supersede executive regulations or other laws relating to appointments by United States trustees, or to otherwise restrict the United States trustee's discretion in making appointments. This information is required, however, in the interest of full disclosure and confidence in the appointment process and to give the court all information that may be relevant to the exercise of judicial discretion in approving the appointment of a trustee or examiner in a chapter 11 case.

NOTES OF ADVISORY COMMITTEE ON RULES—1997  
AMENDMENT

This rule is amended to implement the 1994 amendments to §1104 of the Code regarding the election of a trustee in a chapter 11 case.

Eligibility for voting in an election for a chapter 11 trustee is determined in accordance with Rule 2003(b)(3). Creditors whose claims are deemed filed under §1111(a) are treated for voting purposes as creditors who have filed proofs of claim.

Proxies for the purpose of voting in the election may be solicited only by a creditors' committee appointed under §1102 or by any other party entitled to solicit proxies pursuant to Rule 2006. Therefore, a trustee or examiner who has served in the case, or a committee of equity security holders appointed under §1102, may not solicit proxies.

The procedures for reporting disputes to the court derive from similar provisions in Rule 2003(d) applicable to chapter 7 cases. An election may be disputed by a party in interest or by the United States trustee. For example, if the United States trustee believes that the person elected is ineligible to serve as trustee because the person is not "disinterested," the United States trustee should file a report disputing the election.

The word "only" is deleted from subdivision (b), redesignated as subdivision (c), to avoid any negative inference with respect to the availability of procedures for obtaining review of the United States trustee's acts or failure to act pursuant to Rule 2020.

*GAP Report on Rule 2017.1.* The published draft of proposed new subdivision (b)(3) of Rule 2017.1 [2007.1], and the Committee Note, was substantially revised to implement Mr. Patchan's recommendations (described above), to clarify how a disputed election will be reported, and to make stylistic improvements.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

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.

(Added Apr. 23, 2008, eff. Dec. 1, 2008.)

#### COMMITTEE NOTES ON RULES—2008

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 2008. Notice to Trustee of Selection**

The United States trustee shall immediately notify the person selected as trustee how to qualify and, if applicable, the amount of the trustee's bond. A trustee that has filed a blanket bond pursuant to Rule 2010 and has been selected as trustee in a chapter 7, chapter 12, or chapter 13 case that does not notify the court and the United States trustee in writing of rejection of the office within five days after receipt of notice of selection shall be deemed to have accepted the office. Any other person selected as trustee shall notify the court and the United States trustee in writing of acceptance of the office within five days after receipt of notice of selection or shall be deemed to have rejected the office.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rule 209(c). The remainder of that rule is inapplicable because its provisions are covered by §§701-703, 321 of the Code.

If the person selected as trustee accepts the office, he must qualify within five days after his selection, as required by §322(a) of the Code.

In districts having a standing trustee for chapter 13 cases, a blanket acceptance of the appointment would be sufficient for compliance by the standing trustee with this rule.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The rule is amended to eliminate the need for a standing chapter 13 trustee or member of the panel of chapter 7 trustees to accept or reject an appointment.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

The amendments to this rule relating to the United States trustee are derived from Rule X-1004(a) and conform to the 1986 amendments to the Code and 28 U.S.C. §586 which provide that the United States trustee appoints and supervises trustees, and in a chapter 7 case presides over any election of a trustee. This rule applies when a trustee is either appointed or elected. This rule is also amended to provide for chapter 12 cases.

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

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

(b) **RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE.** Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7.

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

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

(2) *Chapter 11 Reorganization Cases.* If the appointment of a trustee is ordered, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

(3) *Chapter 12 Family Farmer's Debt Adjustment Cases.* The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 12 cases.

(4) *Chapter 13 Individual's Debt Adjustment Cases.* The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 13 cases.

(d) **POTENTIAL CONFLICTS OF INTEREST.** On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been selected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) **SEPARATE ACCOUNTS.** The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Mar. 27, 2003, eff. Dec. 1, 2003.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is applicable in chapter 7 cases and, in part, in chapter 11 and 13 cases. The provisions in subdivisions (a) and (b) concerning creditor election of a trustee apply only in a chapter 7 case because it is only pursuant to §702 of the Code that creditors may elect a trustee. Subdivision (c) of the rule applies in chapter 11 and 13 as well as chapter 7 cases; pursuant to §1104 of the Code, the court may order the appointment of a

trustee on application of a party in interest and, pursuant to §1163 of the Code, the court must appoint a trustee in a railroad reorganization case. Subdivision (c) should not be taken as an indication that more than one trustee may be appointed for a single debtor. Section 1104(c) permits only one trustee for each estate. In a chapter 13 case, if there is no standing trustee, the court is to appoint a person to serve as trustee pursuant to §1302 of the Code. There is no provision for a trustee in a chapter 9 case, except for a very limited purpose; see §926 of the Code.

This rule recognizes that economical and expeditious administration of two or more estates may be facilitated not only by the selection of a single trustee for a partnership and its partners, but by such selection whenever estates are being jointly administered pursuant to Rule 1015. See *In the Matter of International Oil Co.*, 427 F.2d 186, 187 (2d Cir. 1970). The rule is derived from former §5c of the Act and former Bankruptcy Rule 210. The premise of §5c of the Act was that notwithstanding the potentiality of conflict between the interests of the creditors of the partners and those of the creditors of the partnership, the conflict is not sufficiently serious or frequent in most cases to warrant the selection of separate trustees for the firm and the several partners. Even before the proviso was added to §5c of the Act in 1938 to permit the creditors of a general partner to elect their separate trustee for his estate, it was held that the court had discretion to permit such an election or to make a separate appointment when a conflict of interest was recognized. *In re Wood*, 248 Fed. 246, 249-50 (6th Cir.), cert. denied, 247 U.S. 512 (1918); 4 Collier, *Bankruptcy* ¶723.04 (15th ed. 1980). The rule retains in subdivision (e) the features of the practice respecting the selection of a trustee that was developed under §5 of the Act. Subdivisions (a) and (c) permit the court to authorize election of a single trustee or to make a single appointment when joint administration of estates of other kinds of debtors is ordered, but subdivision (d) requires the court to make a preliminary evaluation of the risks of conflict of interest. If after the election or appointment of a common trustee a conflict of interest materializes, the court must take appropriate action to deal with it.

*Subdivision (f)* is derived from §5e of the Act and former Bankruptcy Rule 210(f) and requires that the common trustee keep a separate account for each estate in all cases that are jointly administered.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

One or more trustees may be appointed for estates being jointly administered in chapter 12 cases.

The amendments to this rule are derived from Rule X-1005 and are necessary because the United States trustee, rather than the court, has responsibility for appointing trustees pursuant to §§701, 1104, 1202, and 1302 of the Code.

If separate trustees are ordered for chapter 7 estates pursuant to subdivision (d), separate and successor trustees should be chosen as prescribed in §703 of the Code. If the occasion for another election arises, the United States trustee should call a meeting of creditors for this purpose. An order to select separate trustees does not disqualify an appointed or elected trustee from serving for one of the estates.

*Subdivision (e)* is abrogated because the exercise of discretion by the United States trustee, who is in the Executive Branch, is not subject to advance restriction by rule of court. *United States v. Cox*, 342 F.2d 167 (5th Cir. 1965), cert. denied, 365 U.S. 863 (1965); *United States v. Frumento*, 409 F.Supp. 136, 141 (E.D.Pa.), *aff'd*, 563 F.2d 1083 (3d Cir. 1977), cert. denied, 434 U.S. 1072 (1977); see, *Smith v. United States*, 375 F.2d 243 (5th Cir. 1967); House Report No. 95-595, 95th Cong., 1st Sess. 110 (1977). However, a trustee appointed by the United States trustee may be removed by the court for cause. See §324 of the Code. Subdivision (d) of this rule, as amended, is consistent with §324. Subdivision (f) is redesignated as subdivision (e).

## COMMITTEE NOTES ON RULES—2003 AMENDMENT

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

Other amendments are stylistic.

*Changes Made After Publication and Comments.* No changes since publication.

**Rule 2010. Qualification by Trustee; Proceeding on Bond**

(a) **BLANKET BOND.** The United States trustee may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

(b) **PROCEEDING ON BOND.** A proceeding on the trustee's bond may be brought by any party in interest in the name of the United States for the use of the entity injured by the breach of the condition.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

## NOTES OF ADVISORY COMMITTEE ON RULES—1983

*Subdivisions (a) and (b).* Subdivision (a) gives authority for approval by the court of a single bond to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case. The cases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and approved at one time. When a blanket bond is filed, the trustee qualifies under subdivision (b) of the rule by filing an acceptance of the office.

*Subdivision (c)* prescribes the evidentiary effect of a certified copy of an order approving the trustee's bond given by a trustee under this rule or, when a blanket bond has been authorized, of a certified copy of acceptance. This rule supplements the Federal Rules of Evidence, which apply in bankruptcy cases. See Rule 1101 of the Federal Rules of Evidence. The order of approval should conform to Official Form No. 25. See, however, §549(c) of the Code which provides only for the filing of the petition in the real estate records to serve as constructive notice of the pendency of the case. See also Rule 2011 which prescribes the evidentiary effect of a certificate that the debtor is a debtor in possession.

*Subdivision (d)* is derived from former Bankruptcy Rule 212(f). Reference should be made to §322(a) and (d) of the Code which requires the bond to be filed with the bankruptcy court and places a two year limitation for the commencement of a proceeding on the bond. A bond filed under this rule should conform to Official Form No. 25. A proceeding on the bond of a trustee is governed by the rules in Part VII. See the Note accompanying Rule 7001. See also Rule 9025.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

*Subdivision (b)* is deleted because of the amendment to Rule 2008.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to conform to the 1986 amendment of §322 of the Code. The United States trustee determines the amount and sufficiency of the trustee's

bond. The amendment to subdivision (a) is derived from Rule X-1004(b).

*Subdivision (b)* is abrogated because an order approving a bond is no longer necessary in view of the 1986 amendments to §322 of the Code. Subdivision (c) is redesignated as subdivision (b).

**Rule 2011. Evidence of Debtor in Possession or Qualification of Trustee**

(a) Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.

(b) If a person elected or appointed as trustee does not qualify within the time prescribed by §322(a) of the Code, the clerk shall so notify the court and the United States trustee.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

## NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule prescribes the evidentiary effect of a certificate issued by the clerk that the debtor is a debtor in possession. See Official Form No. 26. Only chapter 11 of the Code provides for a debtor in possession. See §1107(a) of the Code. If, however, a trustee is appointed in the chapter 11 case, there will not be a debtor in possession. See §§1101(1), 1105 of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to provide a procedure for proving that a trustee has qualified in accordance with §322 of the Code. *Subdivision (b)* is added so that the court and the United States trustee will be informed if the person selected as trustee pursuant to §§701, 702, 1104, 1202, 1302, or 1163 fails to qualify within the time prescribed in §322(a).

**Rule 2012. Substitution of Trustee or Successor Trustee; Accounting**

(a) **TRUSTEE.** If a trustee is appointed in a chapter 11 case or the debtor is removed as debtor in possession in a chapter 12 case, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.

(b) **SUCCESSOR TRUSTEE.** When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code (1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and (2) the successor trustee shall prepare, file, and transmit to the United States trustee an accounting of the prior administration of the estate.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

## NOTES OF ADVISORY COMMITTEE ON RULES—1983

Paragraph (1) of this rule implements §325 of the Code. It provides that a pending action or proceeding continues without abatement and that the trustee's successor is automatically substituted as a party whether it be another trustee or the debtor returned to possession, as such party.

Paragraph (2) places it within the responsibility of a successor trustee to file an accounting of the prior administration of the estate. If an accounting is impossible to obtain from the prior trustee because of death or lack of cooperation, prior reports submitted in the earlier administration may be updated.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

*Subdivision (a)* is new. The subdivision provides for the substitution of a trustee appointed in a chapter 11 case for the debtor in possession in any pending litigation.

The original provisions of the rule are now in subdivision (b).

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

*Subdivision (a)* is amended to include any chapter 12 case in which the debtor is removed as debtor in possession pursuant to §1204(a) of the Code.

*Subdivision (b)* is amended to require that the accounting of the prior administration which must be filed with the court is also transmitted to the United States trustee who is responsible for supervising the administration of cases and trustees. See 28 U.S.C. §586(a)(3). Because a court order is not required for the appointment of a successor trustee, requiring the court to fix a time for filing the accounting is inefficient and unnecessary. The United States trustee has supervisory powers over trustees and may require the successor trustee to file the accounting within a certain time period. If the successor trustee fails to file the accounting within a reasonable time, the United States trustee or a party in interest may take appropriate steps including a request for an appropriate court order. See 28 U.S.C. §586(a)(3)(G). The words “with the court” are deleted in subdivision (b)(2) as unnecessary. See Rules 5005(a) and 9001(3).

**Rule 2013. Public Record of Compensation Awarded to Trustees, Examiners, and Professionals**

(a) RECORD TO BE KEPT. The clerk shall maintain a public record listing fees awarded by the court (1) to trustees and attorneys, accountants, appraisers, auctioneers and other professionals employed by trustees, and (2) to examiners. The record shall include the name and docket number of the case, the name of the individual or firm receiving the fee and the amount of the fee awarded. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge. “Trustees,” as used in this rule, does not include debtors in possession.

(b) SUMMARY OF RECORD. At the close of each annual period, the clerk shall prepare a summary of the public record by individual or firm name, to reflect total fees awarded during the preceding year. The summary shall be open to examination by the public without charge. The clerk shall transmit a copy of the summary to the United States trustee.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Rule 213. The first sentence of that rule is omitted because of the provisions in 28 U.S.C. §§586 and 604(f) creating panels of private trustees.

The rule is not applicable to standing trustees serving in chapter 13 cases. See §1302 of the Code.

A basic purpose of the rule is to prevent what Congress has defined as “cronyism.” Appointment or employment, whether in a chapter 7 or 11 case, should not center among a small select group of individuals unless the circumstances are such that it would be warranted. The public record of appointments to be kept by the clerk will provide a means for monitoring the appointment process.

*Subdivision (b)* provides a convenient source for public review of fees paid from debtors’ estates in the bankruptcy courts. Thus, public recognition of appointments, fairly distributed and based on professional qualifications and expertise, will be promoted and notions of improper favor dispelled. This rule is in keeping with the findings of the Congressional subcommittees as set forth in the House Report of the Committee on the Judiciary, No. 95-595, 95th Cong., 1st Sess. 89-99 (1977). These findings included the observations that there were frequent appointments of the same person, contacts developed between the bankruptcy bar and the courts, and an unusually close relationship between the bar and the judges developed over the years. A major purpose of the new statute is to dilute these practices and instill greater public confidence in the system. Rule 2013 implements that laudatory purpose.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

In subdivisions (b) and (c) the word awarded is substituted for the word paid. While clerks do not know if fees are paid, they can determine what fees are awarded by the court.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

*Subdivision (a)* is deleted. The matter contained in this subdivision is more properly left for regulation by the United States trustee. When appointing trustees and examiners and when monitoring applications for employment of auctioneers, appraisers and other professionals, the United States trustee should be sensitive to disproportionate or excessive fees received by any person.

*Subdivision (b)*, redesignated as subdivision (a), is amended to reflect the fact that the United States trustee appoints examiners subject to court approval.

*Subdivision (c)*, redesignated as subdivision (b), is amended to furnish the United States trustee with a copy of the annual summary which may assist that office in the performance of its responsibilities under 28 U.S.C. §586 and the Code.

The rule is not applicable to standing trustees serving in chapter 12 cases. See §1202 of the Code.

**Rule 2014. Employment of Professional Persons**

(a) APPLICATION FOR AND ORDER OF EMPLOYMENT. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to §327, §1103, or §1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant’s knowledge, all of 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. The application shall be accompanied by a verified statement of the person to be employed 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.

(b) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM OF ATTORNEYS OR ACCOUNTANTS. If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation, or individual may act as attorney or accountant so employed, without further order of the court.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

*Subdivision (a)* is adapted from the second sentence of former Bankruptcy Rule 215(a). The remainder of that rule is covered by § 327 of the Code.

*Subdivision (b)* is derived from former Bankruptcy Rule 215(f). The compensation provisions are set forth in § 504 of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to include retention of professionals by committees of retired employees pursuant to § 1114 of the Code.

The United States trustee monitors applications filed under § 327 of the Code and may file with the court comments with respect to the approval of such applications. See 28 U.S.C. § 586(a)(3)(H). The United States trustee also monitors creditors' committees in accordance with 28 U.S.C. § 586(a)(3)(E). The addition of the second sentence of subdivision (a) is designed to enable the United States trustee to perform these duties.

*Subdivision (a)* is also amended to require disclosure of the professional's connections with the United States trustee or persons employed in the United States trustee's office. This requirement is not intended to prohibit the employment of such persons in all cases or to enlarge the definition of "disinterested person" in § 101(13) of the Code. However, the court may consider a connection with the United States trustee's office as a factor when exercising its discretion. Also, this information should be revealed in the interest of full disclosure and confidence in the bankruptcy system, especially since the United States trustee monitors and may be heard on applications for compensation and reimbursement of professionals employed under this rule.

The United States trustee appoints committees pursuant to § 1102 of the Code which is applicable in chapter 9 cases under § 901. In the interest of full disclosure and confidence in the bankruptcy system, a connection between the United States trustee and a professional employed by the committee should be revealed in every case, including a chapter 9 case. However, since the United States trustee does not have any role in the employment of professionals in chapter 9 cases, it is not necessary in such cases to transmit to the United States trustee a copy of the application under subdivision (a) of this rule. See 28 U.S.C. § 586(a)(3)(H).

**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.

(b) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this paragraph.

(c) CHAPTER 13 TRUSTEE AND DEBTOR.

(1) *Business Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

(2) *Nonbusiness Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is

not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.

(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.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 23, 2008, eff. Dec. 1, 2008.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule combines the provisions found in former Rules 218, 10-208, 11-30 and 13-208 of the Rules of Bankruptcy Procedure. It specifies various duties which are in addition to those required by §§704, 1106, 1302 and 1304 of the Code.

In *subdivision (a)* the times permitted to be fixed by the court in clause (3) for the filing of reports and summaries may be fixed by local rule or order.

*Subdivision (b)*. This subdivision prescribes duties on either the debtor or trustee in chapter 13 cases, depending on whether or not the debtor is engaged in business (§1304 of the Code). The duty of giving notice prescribed by subdivision (a)(4) is not included in a nonbusiness case because of its impracticability.

*Subdivision (c)* is derived from former Chapter X Rule 10-208(c) which, in turn, was derived from §190 of the Act. The equity security holders to whom the reports should be sent are those of record at the time of transmittal of such reports.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

*Subdivision (a)* is amended to add as a duty of the trustee or debtor in possession the filing of a notice of or a copy of the petition. The filing of such notice or a copy of the petition is essential to the protection of the estate from unauthorized post-petition conveyances of real property. Section 549(c) of the Code protects the title of a good faith purchaser for fair equivalent value unless the notice or copy of the petition is filed.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

This rule is amended to provide the United States trustee with information needed to perform supervisory responsibilities in accordance with 28 U.S.C. §586(a)(3) and to exercise the right to raise, appear and be heard on issues pursuant to §307 of the Code.

*Subdivision (a)(3)* is amended to conform to the 1986 amendments to §704(8) of the Code and the United States trustee system. It may not be necessary for the court to fix a time to file reports if the United States trustee requests that they be filed within a specified time and there is no dispute regarding such time.

*Subdivision (a)(5)* is deleted because the filing of a notice of or copy of the petition to protect real property against unauthorized postpetition transfers in a particular case is within the discretion of the trustee.

The new subdivision (a)(5) was added to enable the United States trustee, parties in interest, and the court to determine the appropriate quarterly fee required by 28 U.S.C. §1930(a)(6). The requirements of subdivision (a)(5) should be satisfied whenever possible by including this information in other reports filed by the trustee or debtor in possession. Nonpayment of the fee may result in dismissal or conversion of the case pursuant to §1112(b) of the Code.

Rule X-1007(b), which provides that the trustee or debtor in possession shall cooperate with the United States trustee by furnishing information that the United States trustee reasonably requires, is deleted as unnecessary. The deletion of Rule X-1007(b) should not be construed as a limitation of the powers of the United States trustee or of the duty of the trustee or debtor in possession to cooperate with the United States trustee in the performance of the statutory responsibilities of that office.

*Subdivision (a)(6)* is abrogated as unnecessary. See §1106(a)(7) of the Code.

*Subdivision (a)(7)* is abrogated. The closing of a chapter 11 case is governed by Rule 3022.

New *subdivision (b)*, which prescribes the duties of the debtor in possession and trustee in a chapter 12 case, does not prohibit additional reporting requirements pursuant to local rule or court order.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1996 AMENDMENT

*Subdivision (a)(1)* provides that the trustee in a chapter 7 case and, if the court directs, the trustee or debtor in possession in a chapter 11 case, is required to file and transmit to the United States trustee a complete inventory of the debtor's property within 30 days after qualifying as trustee or debtor in possession, unless such an inventory has already been filed. Subdivisions (b) and (c) are amended to clarify that a debtor in possession and trustee in a chapter 12 case, and a debtor in a chapter 13 case where the debtor is engaged in business, are not required to file and transmit to the United States trustee a complete inventory of the property of the debtor unless the court so directs. If the court so directs, the court also fixes the time limit for filing and transmitting the inventory.

*GAP Report on Rule 2015*. No changes since publication, except for a stylistic change in the first sentence of the committee note.

#### COMMITTEE NOTES ON RULES—2002 AMENDMENT

*Subdivision (a)(5)* is amended to provide that the duty to file quarterly disbursement reports continues only so long as there is an obligation to make quarterly payments to the United States trustee under 28 U.S.C. §1930(a)(6).

Other amendments are stylistic.

*Changes Made After Publication and Comments*. No changes were made.

#### COMMITTEE NOTES ON RULES—2008 AMENDMENT

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 non-bankruptcy 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.

(Added Apr. 23, 2008, eff. Dec. 1, 2008.)

COMMITTEE NOTES ON RULES—2008

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.

(Added Apr. 23, 2008, eff. Dec. 1, 2008.)

COMMITTEE NOTES ON RULES—2008

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).

(Added Apr. 23, 2008, eff. Dec. 1, 2008.)

#### COMMITTEE NOTES ON RULES—2008

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 2016. Compensation for Services Rendered and Reimbursement of Expenses**

(a) **APPLICATION FOR COMPENSATION OR REIMBURSEMENT.** An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity

whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.

(b) **DISCLOSURE OF COMPENSATION PAID OR PROMISED TO ATTORNEY FOR DEBTOR.** Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by §329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

(c) **DISCLOSURE OF COMPENSATION PAID OR PROMISED TO BANKRUPTCY PETITION PREPARER.** Every bankruptcy petition preparer for a debtor shall file a declaration under penalty of perjury and transmit the declaration to the United States trustee within 10 days after the date of the filing of the petition, or at another time as the court may direct, as required by §110(h)(1). The declaration must disclose any fee, and the source of any fee, received from or on behalf of the debtor within 12 months of the filing of the case and all unpaid fees charged to the debtor. The declaration must describe the services performed and documents prepared or caused to be prepared by the bankruptcy petition preparer. A supplemental statement shall be filed within 10 days after any payment or agreement not previously disclosed.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Mar. 27, 2003, eff. Dec. 1, 2003.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Rule 219. Many of the former rule's requirements are, however, set forth in the Code. Section 329 requires disclosure by an attorney of transactions with the debtor, §330 sets forth the bases for allowing compensation, and §504 prohibits sharing of compensation. This rule implements those various provisions.

*Subdivision (a)* includes within its provisions a committee, member thereof, agent, attorney or accountant

for the committee when compensation or reimbursement of expenses is sought from the estate.

Regular associate of a law firm is defined in Rule 9001(9) to include any attorney regularly employed by, associated with, or counsel to that law firm. Firm is defined in Rule 9001(6) to include a partnership or professional corporation.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

*Subdivision (a)* is amended to change “person” to “entity”. There are occasions in which a governmental unit may be entitled to file an application under this rule. The requirement that the application contain a “detailed statement of services rendered, time expended and expenses incurred” gives to the court authority to ensure that the application is both comprehensive and detailed. No amendments are made to delineate further the requirements of the application because the amount of detail to be furnished is a function of the nature of the services rendered and the complexity of the case.

*Subdivision (b)* is amended to require that the attorney for the debtor file the §329 statement before the meeting of creditors. This will assist the parties in conducting the examination of the debtor. In addition, the amended rule requires the attorney to supplement the §329 statement if an undisclosed payment is made to the attorney or a new or amended agreement is entered into by the debtor and the attorney.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

*Subdivision (a)* is amended to enable the United States trustee to perform the duty to monitor applications for compensation and reimbursement filed under §330 of the Code. See 28 U.S.C. §586(a)(3)(A).

*Subdivision (b)* is amended to give the United States trustee the information needed to determine whether to request appropriate relief based on excessive fees under §329(b) of the Code. See Rule 2017.

The words “with the court” are deleted in subdivisions (a) and (b) as unnecessary. See Rules 5005(a) and 9001(3).

COMMITTEE NOTES ON RULES—2003 AMENDMENT

This rule is amended by adding subdivision (c) to implement §110(h)(1) of the Code.

*Changes Made After Publication and Comments.* No changes since publication.

**Rule 2017. Examination of Debtor’s Transactions with Debtor’s Attorney**

(a) PAYMENT OR TRANSFER TO ATTORNEY BEFORE ORDER FOR RELIEF. On motion by any party in interest or on the court’s own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.

(b) PAYMENT OR TRANSFER TO ATTORNEY AFTER ORDER FOR RELIEF. On motion by the debtor, the United States trustee, or on the court’s own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from §60d of the Act and former Bankruptcy Rule 220 and implements §329 of the Code. Information required to be disclosed by the attorney for a debtor by §329 of the Code and by the debtor in his Statement of Financial Affairs (Item 15 of Form No. 7, Item 20 of Form No. 8) will assist the court in determining whether to proceed under this rule. Section 60d was enacted in recognition of “the temptation of a failing debtor to deal too liberally with his property in employing counsel to protect him in view of financial reverses and probable failure.” *In re Wood & Henderson*, 210 U.S. 246, 253 (1908). This rule, like §60d of the Act and §329 of the Code, is premised on the need for and appropriateness of judicial scrutiny of arrangements between a debtor and his attorney to protect the creditors of the estate and the debtor against overreaching by an officer of the court who is in a peculiarly advantageous position to impose on both the creditors and his client. 2 Collier, *Bankruptcy* ¶329.02 (15th ed. 1980); MacLachlan, *Bankruptcy* 318 (1956). Rule 9014 applies to any contested matter arising under this rule.

This rule is not to be construed to permit post-petition payments or transfers which may be avoided under other provisions of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to include within subdivision (a) a payment or transfer of property by the debtor to an attorney after the filing of an involuntary petition but before the order for relief. Any party in interest should be able to make a motion for a determination of whether such payment or transfer is excessive because the funds or property transferred may be property of the estate.

The United States trustee supervises and monitors the administration of bankruptcy cases other than chapter 9 cases and pursuant to §307 of the Code may raise, appear and be heard on issues relating to fees paid to the debtor’s attorney. It is consistent with that role to expect the United States trustee to review statements filed under Rule 2016(b) and to file motions relating to excessive fees pursuant to §329 of the Code.

**Rule 2018. Intervention; Right to Be Heard**

(a) PERMISSIVE INTERVENTION. In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.

(b) INTERVENTION BY ATTORNEY GENERAL OF A STATE. In a chapter 7, 11, 12, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.

(c) CHAPTER 9 MUNICIPALITY CASE. The Secretary of the Treasury of the United States may, or if requested by the court shall, intervene in a chapter 9 case. Representatives of the state in which the debtor is located may intervene in a chapter 9 case with respect to matters specified by the court.

(d) LABOR UNIONS. In a chapter 9, 11, or 12 case, a labor union or employees’ association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the

employees. A labor union or employees' association which exercises its right to be heard under this subdivision shall not be entitled to appeal any judgment, order, or decree relating to the plan, unless otherwise permitted by law.

(e) SERVICE ON ENTITIES COVERED BY THIS RULE. The court may enter orders governing the service of notice and papers on entities permitted to intervene or be heard pursuant to this rule.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Rules 8-210, 9-15 and 10-210 and it implements §§1109 and 1164 of the Code.

Pursuant to §1109 of the Code, parties in interest have a right to be heard and the Securities and Exchange Commission may raise and be heard on any issue but it may not take an appeal. That section is applicable in chapter 9 cases (§901 of the Code) and in chapter 11 cases, including cases under subchapter IV thereof for the reorganization of a railroad.

In a railroad reorganization case under subchapter IV of chapter 11, §1164 also gives the right to be heard to the Interstate Commerce Commission, the Department of Transportation and any state or local regulatory commission with jurisdiction over the debtor, but these entities may not appeal.

This rule does not apply in adversary proceedings. For intervention in adversary proceedings, see Rule 7024. The rules do not provide any right of compensation to or reimbursement of expenses for intervenors or others covered by this rule. Section 503(b)(3)(D) and (4) is not applicable to the entities covered by this rule.

*Subdivision (a)* is derived from former Chapter VIII Rule 8-210 and former Chapter X Rule 10-210. It permits intervention of an entity (see §101(14), (21) of the Code) not otherwise entitled to do so under the Code or this rule. Such a party seeking to intervene must show cause therefor.

*Subdivision (b)* specifically grants the appropriate state's Attorney General the right to appear and be heard on behalf of consumer creditors when it is in the public interest. See House Rep. No. 95-595, 95th Cong., 1st Sess. (1977) 189. While "consumer creditor" is not defined in the Code or elsewhere, it would include the type of individual entitled to priority under §507(a)(5) of the Code, that is, an individual who has deposited money for the purchase, lease or rental of property or the purchase of services for the personal, family, or household use of the individual. It would also include individuals who purchased or leased property for such purposes in connection with which there may exist claims for breach of warranty.

This subdivision does not grant the Attorney General the status of party in interest. In other contexts, the Attorney General will, of course, be a party in interest as for example, in representing a state in connection with a tax claim.

*Subdivision (c)* recognizes the possible interests of the Secretary of the Treasury or of the state of the debtor's locale when a municipality is the debtor. It is derived from former Chapter IX Rule 9-15 and §85(d) of the Act.

*Subdivision (d)* is derived from former Chapter X Rule 10-210 which, in turn, was derived from §206 of the Act. Section 206 has no counterpart in the Code.

*Subdivision (e)* is derived from former Chapter VIII Rule 8-210(d). It gives the court flexibility in directing the type of future notices to be given intervenors.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

*Subdivision (d)* is amended to make it clear that the prohibition against appeals by labor unions is limited only to their participation in connection with the hearings on the plan as provided in subdivision (d). If a

labor union would otherwise have the right to file an appeal or to be a party to an appeal, this rule does not preclude the labor union from exercising that right.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

*Subdivisions (b) and (d)* are amended to include chapter 12.

**Rule 2019. Representation of Creditors and Equity Security Holders in Chapter 9 Municipality and Chapter 11 Reorganization Cases**

(a) DATA REQUIRED. In a chapter 9 municipality or chapter 11 reorganization case, except with respect to a committee appointed pursuant to §1102 or 1114 of the Code, every entity or committee representing more than one creditor or equity security holder and, unless otherwise directed by the court, every indenture trustee, shall file a verified statement setting forth (1) the name and address of the creditor or equity security holder; (2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent facts and circumstances in connection with the employment of the entity or indenture trustee, and, in the case of a committee, the name or names of the entity or entities at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of the entity, the organization or formation of the committee, or the appearance in the case of any indenture trustee, the amounts of claims or interests owned by the entity, the members of the committee or the indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby the entity, committee, or indenture trustee is empowered to act on behalf of creditors or equity security holders. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.

(b) FAILURE TO COMPLY; EFFECT. On motion of any party in interest or on its own initiative, the court may (1) determine whether there has been a failure to comply with the provisions of subdivision (a) of this rule or with any other applicable law regulating the activities and personnel of any entity, committee, or indenture trustee or any other impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit that entity, committee, or indenture trustee to be heard further or to intervene in the case; (2) examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim or interest acquired by any entity or committee in contemplation or in the course of a case under the Code and grant appropriate relief; and (3) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by an entity or committee who has not complied with this rule or with §1125(b) of the Code.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is a comprehensive regulation of representation in chapter 9 municipality and in chapter 11 reorganization cases. It is derived from §§209–213 of the Act and former Chapter X Rule 10–211.

*Subdivision (b)* is derived from §§212, 213 of the Act. As used in clause (2), “other authorization” would include a power or warrant of attorney which are specifically mentioned in §212 of the Act. This rule deals with representation provisions in mortgages, trust deeds, etc. to protect the beneficiaries from unfair practices and the like. It does not deal with the validation or invalidation of security interests generally. If immediate compliance is not possible, the court may permit a representative to be heard on a specific matter, but there is no implicit waiver of compliance on a permanent basis.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

*Subdivision (a)* is amended to exclude from the requirements of this rule committees of retired employees appointed pursuant to §1114 of the Code. The words “with the clerk” are deleted as unnecessary. See Rules 5005(a) and 9001(3).

**Rule 2020. Review of Acts by United States Trustee**

A proceeding to contest any act or failure to act by the United States trustee is governed by Rule 9014.

(Added Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1991

The United States trustee performs administrative functions, such as the convening of the meeting of creditors and the appointment of trustees and committees. Most of the acts of the United States trustee are not controversial and will go unchallenged. However, the United States trustee is not a judicial officer and does not resolve disputes regarding the propriety of its own actions. This rule, which is new, provides a procedure for judicial review of the United States trustee’s acts or failure to act in connection with the administration of the case. For example, if the United States trustee schedules a §341 meeting to be held 90 days after the petition is filed, and a party in interest wishes to challenge the propriety of that act in view of §341(a) of the Code and Rule 2003 which requires that the meeting be held not more than 40 days after the order for relief, this rule permits the party to do so by motion.

This rule provides for review of acts already committed by the United States trustee, but does not provide for advisory opinions in advance of the act. This rule is not intended to limit the discretion of the United States trustee, provided that the United States trustee’s act is authorized by, and in compliance with, the Code, title 28, these rules, and other applicable law.

PART III—CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

**Rule 3001. Proof of Claim**

(a) **FORM AND CONTENT.** A proof of claim is a written statement setting forth a creditor’s claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) **WHO MAY EXECUTE.** A proof of claim shall be executed by the creditor or the creditor’s authorized agent except as provided in Rules 3004 and 3005.

(c) **CLAIM BASED ON A WRITING.** When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(d) **EVIDENCE OF PERFECTION OF SECURITY INTEREST.** If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) **TRANSFERRED CLAIM.**

(1) *Transfer of Claim Other Than for Security Before Proof Filed.* If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

(2) *Transfer of Claim Other Than for Security After Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

(3) *Transfer of Claim for Security Before Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(4) *Transfer of Claim for Security After Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of