

ings to approve reaffirmation agreements of unrepresented debtors under §524(c)(6), the rule leaves discretion to the court to set the hearing at a time appropriate for the particular circumstances presented in the case and consistent with the scheduling needs of the parties.

Changes Made After Publication. The only change was stylistic. The phrase “of the Code” was added to subdivision (b).

PART V—COURTS AND CLERKS

Rule 5001. Courts and Clerks’ Offices

(a) **COURTS ALWAYS OPEN.** The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.

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

(c) **CLERK’S OFFICE.** The clerk’s office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 9006(a).

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from subdivisions (a), (b) and (c) of Rule 77 F.R.Civ.P.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

Rule 9001, as amended, defines court to mean the bankruptcy judge or district judge before whom a case or proceeding is pending. Clerk means the bankruptcy clerk, if one has been appointed for the district; if a bankruptcy clerk has not been appointed, clerk means clerk of the district court.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Subdivision (c) is amended to refer to Rule 9006(a) for a list of legal holidays. Reference to F.R.Civ.P. is not necessary for this purpose.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

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

Changes Made After Publication. No changes were made after publication.

Rule 5002. Restrictions on Approval of Appointments

(a) **APPROVAL OF APPOINTMENT OF RELATIVES PROHIBITED.** The appointment of an individual as

a trustee or examiner pursuant to §1104 of the Code shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the appointment or the United States trustee in the region in which the case is pending. The employment of an individual as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§327, 1103, or 1114 shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the employment. The employment of an individual as attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§327, 1103, or 1114 may be approved by the court if the individual is a relative of the United States trustee in the region in which the case is pending, unless the court finds that the relationship with the United States trustee renders the employment improper under the circumstances of the case. Whenever under this subdivision an individual may not be approved for appointment or employment, the individual’s firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof also may not be approved for appointment or employment.

(b) **JUDICIAL DETERMINATION THAT APPROVAL OF APPOINTMENT OR EMPLOYMENT IS IMPROPER.** A bankruptcy judge may not approve the appointment of a person as a trustee or examiner pursuant to §1104 of the Code or approve the employment of a person as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§327, 1103, or 1114 of the Code if that person is or has been so connected with such judge or the United States trustee as to render the appointment or employment improper.

(As amended Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rule 505(a). The scope of the prohibition on appointment or employment is expanded to include an examiner appointed under §1104 of the Code and attorneys and other professional persons whose employment must be approved by the court under §327 or §1103.

The rule supplements two statutory provisions. Under 18 U.S.C. §1910, it is a criminal offense for a judge to appoint a relative as a trustee and, under 28 U.S.C. §458, a person may not be “appointed to or employed in any office or duty in any court” if he is a relative of any judge of that court. The rule prohibits the appointment or employment of a relative of a bankruptcy judge in a case pending before that bankruptcy judge or before other bankruptcy judges sitting within the district.

A relative is defined in §101(34) of the Code to be an “individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree.” Persons within the third degree under the common law system are as follows: first degree—parents, brothers and sisters, and children; second degree—grandparents, uncles and aunts, first cousins, nephews and nieces, and grandchildren; third degree—great grandparents, great uncles and aunts, first cousins once removed, second cousins, grand nephews and nieces, great grandchildren. Rule 9001 incorporates the definitions of §101 of the Code.

In order for the policy of this rule to be meaningfully implemented, it is necessary to extend the prohibition against appointment or employment to the firm or

other business association of the ineligible person and to those affiliated with the firm or business association. "Firm" is defined in Rule 9001 to include a professional partnership or corporation of attorneys or accountants. All other types of business and professional associations and relationships are covered by this rule.

NOTES OF ADVISORY COMMITTEE ON RULES—1985
AMENDMENT

The amended rule is divided into two subdivisions. Subdivision (a) applies to relatives of bankruptcy judges and subdivision (b) applies to persons who are or have been connected with bankruptcy judges. Subdivision (a) permits no judicial discretion; subdivision (b) allows judicial discretion. In both subdivisions of the amended rule "bankruptcy judge" has been substituted for "judge". The amended rule makes clear that it only applies to relatives of, or persons connected with, the bankruptcy judge. See *In re Hilltop Sand and Gravel, Inc.*, 35 B.R. 412 (N.D. Ohio 1983).

Subdivision (a). The original rule prohibited all bankruptcy judges in a district from appointing or approving the employment of (i) a relative of any bankruptcy judge serving in the district, (ii) the firm or business association of any ineligible relative and (iii) any member or professional employee of the firm or business association of an ineligible relative. In addition, the definition of relative, the third degree relationship under the common law, is quite broad. The restriction on the employment opportunities of relatives of bankruptcy judges was magnified by the fact that many law and accounting firms have practices and offices spanning the nation.

Relatives are not eligible for appointment or employment when the bankruptcy judge to whom they are related makes the appointment or approves the employment. Canon 3(b)(4) of the Code of Judicial Conduct, which provides that the judge "shall exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism," should guide a bankruptcy judge when a relative of a judge of the same bankruptcy court is considered for appointment or employment.

Subdivision (b), derived from clause (2) of the original rule, makes a person ineligible for appointment or employment if the person is so connected with a bankruptcy judge making the appointment or approving the employment as to render the appointment or approval of employment improper. The caption and text of the subdivision emphasize that application of the connection test is committed to the sound discretion of the bankruptcy judge who is to make the appointment or approve the employment. All relevant circumstances are to be taken into account by the court. The most important of those circumstances include: the nature and duration of the connection with the bankruptcy judge; whether the connection still exists, and, if not, when it was terminated; and the type of appointment or employment. These and other considerations must be carefully evaluated by the bankruptcy judge.

The policy underlying subdivision (b) is essentially the same as the policy embodied in the Code of Judicial Conduct. Canon 2 of the Code of Judicial Conduct instructs a judge to avoid impropriety and the appearance of impropriety, and Canon 3(b)(4) provides that the judge "should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism." Subdivision (b) alerts the potential appointee or employee and party seeking approval of employment to consider the possible relevance or impact of subdivision (b) and indicates to them that appropriate disclosure must be made to the bankruptcy court before accepting appointment or employment. The information required may be made a part of the application for approval of employment. See Rule 2014(a).

Subdivision (b) departs from the former rule in an important respect: a firm or business association is not prohibited from appointment or employment merely because an individual member or employee of the firm or business association is ineligible under subdivision (b).

The emphasis given to the bankruptcy court's judicial discretion in applying subdivision (b) and the absence of a *per se* extension of ineligibility to the firm or business association or any ineligible individual complement the amendments to subdivision (a). The change is intended to moderate the prior limitation on the employment opportunities of attorneys, accountants and other professional persons who are or who have been connected in some way with the bankruptcy judge. For example, in all but the most unusual situations service as a law clerk to a bankruptcy judge is not the type of connection which alone precludes appointment or employment. Even if a bankruptcy judge determines that it is improper to appoint or approve the employment of a former law clerk in the period immediately after completion of the former law clerk's service with the judge, the firm which employs the former law clerk will, absent other circumstances, be eligible for employment. In each instance all the facts must be considered by the bankruptcy judge.

Subdivision (b) applies to persons connected with a bankruptcy judge. "Person" is defined in §101 of the Bankruptcy Code to include an "individual, partnership and corporation". A partnership or corporation may be appointed or employed to serve in a bankruptcy case. If a bankruptcy judge is connected in some way with a partnership or corporation, it is necessary for the court to determine whether the appointment or employment of that partnership or corporation is proper.

The amended rule does not regulate professional relationships which do not require approval of a bankruptcy judge. Disqualification of the bankruptcy judge pursuant to 28 U.S.C. §455 may, however, be appropriate. Under Rule 5004(a), a bankruptcy judge may find that disqualification from only some aspect of the case, rather than the entire case, is necessary. A situation may also arise in which the disqualifying circumstance only comes to light after services have been performed. Rule 5004(b) provides that if compensation from the estate is sought for these services, the bankruptcy judge is disqualified from awarding compensation.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The 1986 amendments to the Code provide that the United States trustee shall appoint trustees in chapter 7, chapter 12, and chapter 13 cases without the necessity of court approval. This rule is not intended to apply to the appointment of trustees in those cases because it would be inappropriate for a court rule to restrict in advance the exercise of discretion by the executive branch. See Committee Note to Rule 2009.

In chapter 11 cases, a trustee or examiner is appointed by the United States trustee after consultation with parties in interest and subject to court approval. Subdivision (a), as amended, prohibits the approval of the appointment of an individual as a trustee or examiner if the person is a relative of the United States trustee making the appointment or the bankruptcy judge approving the appointment.

The United States trustee neither appoints nor approves the employment of professional persons employed pursuant to §§327, 1103, or 1114 of the Code. Therefore, subdivision (a) is not a prohibition against judicial approval of employment of a professional person who is a relative of the United States trustee. However, the United States trustee monitors applications for compensation and reimbursement of expenses and may raise, appear and be heard on issues in the case. Employment of relatives of the United States trustee may be approved unless the court finds, after considering the relationship and the particular circumstances of the case, that the relationship would cause the employment to be improper. As used in this rule, "improper" includes the appearance of impropriety.

United States trustee is defined to include a designee or assistant United States trustee. See Rule 9001. Therefore, subdivision (a) is applicable if the person appointed as trustee or examiner or the professional to be employed is a relative of a designee of the United

States trustee or any assistant United States trustee in the region in which the case is pending.

This rule is not exclusive of other laws or rules regulating ethical conduct. See, e.g., 28 CFR § 45.735-5.

Rule 5003. Records Kept By the Clerk

(a) **BANKRUPTCY DOCKETS.** The clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.

(b) **CLAIMS REGISTER.** The clerk shall keep in a claims register a list of claims filed in a case when it appears that there will be a distribution to unsecured creditors.

(c) **JUDGMENTS AND ORDERS.** The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a correct copy of every final judgment or order affecting title to or lien on real property or for the recovery of money or property, and any other order which the court may direct to be kept. On request of the prevailing party, a correct copy of every judgment or order affecting title to or lien upon real or personal property or for the recovery of money or property shall be kept and indexed with the civil judgments of the district court.

(d) **INDEX OF CASES; CERTIFICATE OF SEARCH.** The clerk shall keep indices of all cases and adversary proceedings as prescribed by the Director of the Administrative Office of the United States Courts. On request, the clerk shall make a search of any index and papers in the clerk's custody and certify whether a case or proceeding has been filed in or transferred to the court or if a discharge has been entered in its records.

(e) **REGISTER OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS AND CERTAIN TAXING AUTHORITIES.** The United States or the state or territory in which the court is located may file a statement designating its mailing address. The United States, state, territory, or local governmental unit responsible for collecting taxes within the district in which the case is pending may also file a statement designating an address for service of requests under § 505(b) of the Code, and the designation shall describe where further information concerning additional requirements for filing such requests may be found. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes the mailing addresses designated under the first sentence of this subdivision, and a separate register of the addresses designated for the service of requests under § 505(b) of the Code. The clerk is not required to include in any single register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk

shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

(f) **OTHER BOOKS AND RECORDS OF THE CLERK.** The clerk shall keep any other books and records required by the Director of the Administrative Office of the United States Courts.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule consolidates former Bankruptcy Rules 504 and 507. The record-keeping duties of the referee under former Bankruptcy Rule 504 are transferred to the clerk. Subdivisions (a), (c), (d) and (e) are similar to subdivisions (a)–(d) of Rule 79 F.R.Civ.P.

Subdivision (b) requires that filed claims be listed on a claims register only when there may be a distribution to unsecured creditors. Compilation of the list for no asset or nominal asset cases would serve no purpose.

Rule 2013 requires the clerk to maintain a public record of fees paid from the estate and an annual summary thereof.

Former Bankruptcy Rules 507(d) and 508, which made materials in the clerk's office and files available to the public, are not necessary because §107 of the Code guarantees public access to files and dockets of cases under the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Subdivision (a) has been made more specific.

Subdivision (c) is amended to require that on the request of the prevailing party the clerk of the district court shall keep and index bankruptcy judgments and orders affecting title to or lien upon real or personal property or for the recovery of money or property with the civil judgments of the district court. This requirement is derived from former Rule 9021(b). The Director of the Administrative Office will provide guidance to the bankruptcy and district court clerks regarding appropriate paperwork and retention procedures.

COMMITTEE NOTES ON RULES—2000 AMENDMENT

Subdivision (e) is added to provide a source where debtors, their attorneys, and other parties may go to determine whether the United States or the state or territory in which the court is located has filed a statement designating a mailing address for notice purposes. By using the address in the register—which must be available to the public—the sender is assured that the mailing address is proper. But the use of an address that differs from the address included in the register does not invalidate the notice if it is otherwise effective under applicable law.

The register may include a separate mailing address for each department, agency, or instrumentality of the United States or the state or territory. This rule does not require that addresses of municipalities or other local governmental units be included in the register, but the clerk may include them.

Although it is important for the register to be kept current, debtors, their attorneys, and other parties should be able to rely on mailing addresses listed in the register without the need to continuously inquire as to new or amended addresses. Therefore, the clerk must update the register, but only once each year.

To avoid unnecessary cost and burden on the clerk and to keep the register a reasonable length, the clerk is not required to include more than one mailing address for a particular agency, department, or instrumentality of the United States or the state or terri-

tory. But if more than one address is included, the clerk is required to include information so that a person using the register could determine when each address should be used. In any event, the inclusion of more than one address for a particular department, agency, or instrumentality does not impose on a person sending a notice the duty to send it to more than one address.

GAP Report on Rule 5003. No changes since publication.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

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

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

Rule 5004. Disqualification

(a) **DISQUALIFICATION OF JUDGE.** A bankruptcy judge shall be governed by 28 U.S.C. §455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, shall be disqualified from presiding over the case.

(b) **DISQUALIFICATION OF JUDGE FROM ALLOWING COMPENSATION.** A bankruptcy judge shall be disqualified from allowing compensation to a person who is a relative of the bankruptcy judge or with whom the judge is so connected as to render it improper for the judge to authorize such compensation.

(As amended Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 30, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivision (a). Disqualification of a bankruptcy judge is governed by 28 U.S.C. §455. That section provides that the judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned” or under certain other circumstances. In a case under the Code it is possible that the disqualifying circumstance will be isolated to an adversary proceeding or contested matter. The rule makes it clear that when the disqualifying circumstance is limited in that way the judge need only disqualify himself from presiding over that adversary proceeding or contested matter.

It is possible, however, that even if the disqualifying circumstance arises in connection with an adversary proceeding, the effect will be so pervasive that disqualification from presiding over the case is appropriate. This distinction is consistent with the definition of “proceeding” in 28 U.S.C. §455(d)(1).

Subdivision (b) precludes a bankruptcy judge from allowing compensation from the estate to a relative or other person closely associated with the judge. The subdivision applies where the judge has not appointed or approved the employment of the person requesting compensation. Perhaps the most frequent application of the subdivision will be in the allowance of administrative expenses under §503(b)(3)–(5) of the Code. For example, if an attorney or accountant is retained by an indenture trustee who thereafter makes a substantial contribution in a chapter 11 case, the attorney or ac-

countant may seek compensation under §503(b)(4). If the attorney or accountant is a relative of or associated with the bankruptcy judge, the judge may not allow compensation to the attorney or accountant. Section 101(34) defines relative and Rule 9001 incorporates the definitions of the Code. See the Advisory Committee’s Note to Rule 5002.

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Subdivision (a) was affected by the Bankruptcy Amendments and Federal Judgeship Act of 1984, P.L. 98–353, 98 Stat. 333. The 1978 Bankruptcy Reform Act, P.L. 95–598, included bankruptcy judges in the definition of United States judges in 28 U.S.C. §451 and they were therefore subject to the provisions of 28 U.S.C. §455. This was to become effective on April 1, 1984, P.L. 95–598, §404(b). Section 113 of P.L. 98–353, however, appears to have rendered the amendment to 28 U.S.C. §451 ineffective. Subdivision (a) of the rule retains the substance and intent of the earlier draft by making bankruptcy judges subject to 28 U.S.C. §455.

The word “associated” in subdivision (b) has been changed to “connected” in order to conform with Rule 5002(b).

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The rule is amended to be gender neutral. The bankruptcy judge before whom the matter is pending determines whether disqualification is required.

Rule 5005. Filing and Transmittal of Papers

(a) **FILING.**

(1) *Place of Filing.* The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. §1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices.

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

(b) **TRANSMITTAL TO THE UNITED STATES TRUSTEE.**

(1) The complaints, motions, applications, objections and other papers required to be transmitted to the United States trustee by these rules shall be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending.

(2) The entity, other than the clerk, transmitting a paper to the United States trustee shall promptly file as proof of such transmittal a verified statement identifying the paper and stating the date on which it was transmitted to the United States trustee.

(3) Nothing in these rules shall require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.

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

(As amended 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. 12, 2006, eff. Dec. 1, 2006.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivision (a) is an adaptation of Rule 5(e) F.R.Civ.P. Sections 301-304 of the Code and Rules 1002 and 1003 require that cases under the Code be commenced by filing a petition “with the bankruptcy court.” Other sections of the Code and other rules refer to or contemplate filing but there is no specific reference to filing with the bankruptcy court. For example, §501 of the Code requires filing of proofs of claim and Rule 3016(c) requires the filing of a disclosure statement. This subdivision applies to all situations in which filing is required. Except when filing in another district is authorized by 28 U.S.C. §1473, all papers, including complaints commencing adversary proceedings, must be filed in the court where the case under the Code is pending.

Subdivision (b) is the same as former Bankruptcy Rule 509(c).

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

Subdivision (a) is amended to conform with the 1984 amendments.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Subdivision (b)(1) is flexible in that it permits the United States trustee to designate a place or places for receiving papers within the district in which the case is pending. Transmittal of papers to the United States trustee may be accomplished by mail or delivery, including delivery by courier, and the technical requirements for service of process are not applicable. Although papers relating to a proceeding commenced in another district pursuant to 28 U.S.C. §1409 must be filed with the clerk in that district, the papers required

to be transmitted to the United States trustee must be mailed or delivered to the United States trustee in the district in which the case under the Code is pending. The United States trustee in the district in which the case is pending monitors the progress of the case and should be informed of all developments in the case wherever the developments take place.

Subdivision (b)(2) requires that proof of transmittal to the United States trustee be filed with the clerk. If papers are served on the United States trustee by mail or otherwise, the filing of proof of service would satisfy the requirements of this subdivision. This requirement enables the court to assure that papers are actually transmitted to the United States trustee in compliance with the rules. When the rules require that a paper be transmitted to the United States trustee and proof of transmittal has not been filed with the clerk, the court should not schedule a hearing or should take other appropriate action to assure that the paper is transmitted to the United States trustee. The filing of the verified statement with the clerk also enables other parties in interest to determine whether a paper has been transmitted to the United States trustee.

Subdivision (b)(3) is designed to relieve the clerk of any obligation under these rules to transmit any paper to the United States trustee if the United States trustee does not wish to receive it.

Subdivision (c) is amended to include the erroneous delivery of papers intended to be transmitted to the United States trustee.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

Subdivision (a) is amended to conform to the 1991 amendment to Rule 5(e) F.R.Civ.P. It is not a suitable role for the office of the clerk to refuse to accept for filing papers not conforming to requirements of form imposed by these rules or by local rules or practices. The enforcement of these rules and local rules is a role for a judge. This amendment does not require the clerk to accept for filing papers sent to the clerk’s office by facsimile transmission.

NOTES OF ADVISORY COMMITTEE ON RULES—1996 AMENDMENT

The rule is amended to permit, but not require, courts to adopt local rules that allow filing, signing, or verifying of documents by electronic means. However, such local rules must be consistent with technical standards, if any, promulgated by the Judicial Conference of the United States.

An important benefit to be derived by permitting filing by electronic means is that the extensive volume of paper received and maintained as records in the clerk’s office will be reduced substantially. With the receipt of electronic data transmissions by computer, the clerk may maintain records electronically without the need to reproduce them in tangible paper form.

Judicial Conference standards governing the technological aspects of electronic filing will result in uniformity among judicial districts to accommodate an increasingly national bar. By delegating to the Judicial Conference the establishment and future amendment of national standards for electronic filing, the Supreme Court and Congress will be relieved of the burden of reviewing and promulgating detailed rules dealing with complex technological standards. Another reason for leaving to the Judicial Conference the formulation of technological standards for electronic filing is that advances in computer technology occur often, and changes in the technological standards may have to be implemented more frequently than would be feasible by rule amendment under the Rules Enabling Act process.

It is anticipated that standards established by the Judicial Conference will govern technical specifications for electronic data transmission, such as requirements relating to the formatting of data, speed of transmission, means to transmit copies of supporting documentation, and security of communication proce-

dures. In addition, before procedures for electronic filing are implemented, standards must be established to assure the proper maintenance and integrity of the record and to provide appropriate access and retrieval mechanisms. These matters will be governed by local rules until system-wide standards are adopted by the Judicial Conference.

Rule 9009 requires that the Official Forms shall be observed and used “with alterations as may be appropriate.” Compliance with local rules and any Judicial Conference standards with respect to the formatting or presentation of electronically transmitted data, to the extent that they do not conform to the Official Forms, would be an appropriate alteration within the meaning of Rule 9009.

These rules require that certain documents be in writing. For example, Rule 3001 states that a proof of claim is a “written statement.” Similarly, Rule 3007 provides that an objection to a claim “shall be in writing.” Pursuant to the new subdivision (a)(2), any requirement under these rules that a paper be written may be satisfied by filing the document by electronic means, notwithstanding the fact that the clerk neither receives nor prints a paper reproduction of the electronic data.

Section 107(a) of the Code provides that a “paper” filed in a case is a public record open to examination by an entity at reasonable times without charge, except as provided in §107(b). The amendment to subdivision (a)(2) provides that an electronically filed document is to be treated as such a public record.

Although under subdivision (a)(2) electronically filed documents may be treated as written papers or as signed or verified writings, it is important to emphasize that such treatment is only for the purpose of applying these rules. In addition, local rules and Judicial Conference standards regarding verification must satisfy the requirements of 28 U.S.C. §1746.

GAP Report on Rule 5005. No changes since publication.

COMMITTEE NOTES ON RULES—2006 AMENDMENT

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

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

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

leave to the Committee Note and instead should be included in the text of the rule.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (a)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 5006. Certification of Copies of Papers

The clerk shall issue a certified copy of the record of any proceeding in a case under the Code or of any paper filed with the clerk on payment of any prescribed fee.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Fees for certification and copying are fixed by the Judicial Conference under 28 U.S.C. §1930(b).

Rule 1101 F. R. Evid. makes the Federal Rules of Evidence applicable to cases under the Code. Rule 1005 F. R. Evid. allows the contents of an official record or of a paper filed with the court to be proved by a duly certified copy. A copy certified and issued in accordance with Rule 5006 is accorded authenticity by Rule 902(4) F. R. Evid.

Rule 5007. Record of Proceedings and Transcripts

(a) **FILING OF RECORD OR TRANSCRIPT.** The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy.

(b) **TRANSCRIPT FEES.** The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk.

(c) **ADMISSIBILITY OF RECORD IN EVIDENCE.** A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

(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 supplements 28 U.S.C. §773. A record of proceedings before the bankruptcy judge is to be made whenever practicable. By whatever means the record is made, subdivision (a) requires that the preparer of the record certify and file the original notes, tape recording, or other form of sound recording of the proceedings. Similarly, if a transcript is requested, the preparer is to file a certified copy with the clerk.

Subdivision (b) is derived from 28 U.S.C. §753(f).

Subdivision (c) is derived from former Bankruptcy Rule 511(c). This subdivision extends to a sound recording the same evidentiary status as a transcript under 28 U.S.C. §773(b).

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

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

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

If a presumption of abuse has arisen under §707(b) in a chapter 7 case of an individual with

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

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

NOTES OF ADVISORY COMMITTEE ON RULES—1991

This rule [Rule 5008. Funds of the Estate; abrogated Apr. 30, 1991, eff. Aug. 1, 1991] is abrogated in view of the amendments to §345(b) of the Code and the role of the United States trustee in approving bonds and supervising trustees.

COMMITTEE NOTES ON RULES—2008

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

Changes Made After Publication. No changes were made after publication.

Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases

If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is the same as §350(a) of the Code. An estate may be closed even though the period allowed by Rule 3002(c) for filing claims has not expired. The closing of a case may be expedited when a notice of no dividends is given under Rule 2002(e). Dismissal of a case for want of prosecution or failure to pay filing fees is governed by Rule 1017.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The final report and account of the trustee is required to be filed with the court and the United States trustee under §§704(9), 1202(b)(1), and 1302(b)(1) of the Code. This amendment facilitates the United States trustee's performance of statutory duties to supervise trustees and administer cases under chapters 7, 12, and 13 pursuant to 28 U.S.C. §586. In the absence of a timely objection by the United States trustee or a party in in-

terest, the court may discharge the trustee and close the case pursuant to §350(a) without the need to review the final report and account or to determine the merits of the trustee's certification that the estate has been fully administered.

Rule 3022 governs the closing of chapter 11 cases.

Rule 5010. Reopening Cases

A case may be reopened on motion of the debtor or other party in interest pursuant to §350(b) of the Code. In a chapter 7, 12, or 13 case a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is not necessary to protect the interests of creditors and the debtor or to insure efficient administration of 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

Section 350(b) of the Code provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

Rule 9024, which incorporates Rule 60 F.R.Civ.P., exempts motions to reopen cases under the Code from the one year limitation of Rule 60(b).

Although a case has been closed the court may sometimes act without reopening the case. Under Rule 9024, clerical errors in judgments, orders, or other parts of the record or errors therein caused by oversight or omission may be corrected. A judgment determined to be non-dischargeable pursuant to Rule 4007 may be enforced after a case is closed by a writ of execution obtained pursuant to Rule 7069.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

In order to avoid unnecessary cost and delay, the rule is amended to permit reopening of a case without the appointment of a trustee when the services of a trustee are not needed.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to conform to the 1986 amendments to the Code that give the United States trustee the duty to appoint trustees in chapter 7, 12 and 13 cases. See §§701, 702(d), 1202(a), and 1302(a) of the Code. In most reopened cases, a trustee is not needed because there are no assets to be administered. Therefore, in the interest of judicial economy, this rule is amended so that a motion will not be necessary unless the United States trustee or a party in interest seeks the appointment of a trustee in the reopened case.

Rule 5011. Withdrawal and Abstention from Hearing a Proceeding

(a) WITHDRAWAL. A motion for withdrawal of a case or proceeding shall be heard by a district judge.

(b) ABSTENTION FROM HEARING A PROCEEDING. A motion for abstention pursuant to 28 U.S.C. §1334(c) shall be governed by Rule 9014 and shall be served on the parties to the proceeding.

(c) EFFECT OF FILING OF MOTION FOR WITHDRAWAL OR ABSTENTION. The filing of a motion for withdrawal of a case or proceeding or for abstention pursuant to 28 U.S.C. §1334(c) shall not stay the administration of the case or any proceeding therein before the bankruptcy judge except that the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion. A

motion for a stay ordinarily shall be presented first to the bankruptcy judge. A motion for a stay or relief from a stay filed in the district court shall state why it has not been presented to or obtained from the bankruptcy judge. Relief granted by the district judge shall be on such terms and conditions as the judge deems proper.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1987

Motions for withdrawal pursuant to 28 U.S.C. §157(d) or abstention pursuant to 28 U.S.C. §1334(c), like all other motions, are to be filed with the clerk as required by Rule 5005(a). If a bankruptcy clerk has been appointed for the district, all motions are filed with the bankruptcy clerk. The method for forwarding withdrawal motions to the district court will be established by administrative procedures.

Subdivision (a). Section 157(d) permits the district court to order withdrawal on its own motion or the motion of a party. Subdivision (a) of this rule makes it clear that the bankruptcy judge will not conduct hearings on a withdrawal motion. The withdrawal decision is committed exclusively to the district court.

Subdivision (b). A decision to abstain under 28 U.S.C. §1334(c) is not appealable. The district court is vested originally with jurisdiction and the decision to relinquish that jurisdiction must ultimately be a matter for the district court. The bankruptcy judge ordinarily will be in the best position to evaluate the grounds asserted for abstention. This subdivision (b) provides that the initial hearing on the motion is before the bankruptcy judge. The procedure for review of the report and recommendation are governed by Rule 9033.

This rule does not apply to motions under §305 of the Code for abstention from hearing a case. Judicial decisions will determine the scope of the bankruptcy judge's authority under §305.

Subdivision (c). Unless the court so orders, proceedings are not stayed when motions are filed for withdrawal or for abstention from hearing a proceeding. Because of the district court's authority over cases and proceedings, the subdivision authorizes the district court to order a stay or modify a stay ordered by the bankruptcy judge.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Subdivision (b) is amended to delete the restriction that limits the role of the bankruptcy court to the filing of a report and recommendation for disposition of a motion for abstention under 28 U.S.C. §1334(c)(2). This amendment is consistent with §309(b) of the Judicial Improvements Act of 1990 which amended §1334(c)(2) so that it allows an appeal to the district court of a bankruptcy court's order determining an abstention motion. This subdivision is also amended to clarify that the motion is a contested matter governed by Rule 9014 and that it must be served on all parties to the proceeding which is the subject of the motion.

PART VI—COLLECTION AND LIQUIDATION
OF THE ESTATE

**Rule 6001. Burden of Proof As to Validity of Post
Petition Transfer**

Any entity asserting the validity of a transfer under §549 of the Code shall have the burden of proof.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Bankruptcy Rule 603. The Act contained, in §70d, a provision placing the burden of proof on the same person as did Rule 603. The Code does not contain any directive with respect to the

burden of proof. This omission, in all probability, resulted from the intention to leave matters affecting evidence to these rules. See H. Rep. No. 95-595, 95th Cong. 1st Sess. (1977) 293.

**Rule 6002. Accounting by Prior Custodian of
Property of the Estate**

(a) ACCOUNTING REQUIRED. Any custodian required by the Code to deliver property in the custodian's possession or control to the trustee shall promptly file and transmit to the United States trustee a report and account with respect to the property of the estate and the administration thereof.

(b) EXAMINATION OF ADMINISTRATION. On the filing and transmittal of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, after notice and a hearing, the court shall determine the propriety of the administration, including the reasonableness of all disbursements.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

"Custodian" is defined in §101(10) of the Code. The definition includes a trustee or receiver appointed in proceedings not under the Code, as well as an assignee for the benefit of creditors.

This rule prescribes the procedure to be followed by a custodian who under §543 of the Code is required to deliver property to the trustee and to account for its disposition. The examination under subdivision (b) may be initiated (1) on the motion of the custodian required to account under subdivision (a) for an approval of his account and discharge thereon, (2) on the motion of, or the filing of an objection to the custodian's account by, the trustee or any other party in interest, or (3) on the court's own initiative. Rule 9014 applies to any contested matter arising under this rule.

Section 543(d) is similar to an abstention provision. It grants the bankruptcy court discretion to permit the custodian to remain in possession and control of the property. In that event, the custodian is excused from complying with §543(a)-(c) and thus would not be required to turn over the property to the trustee. When there is no duty to turn over to the trustee, Rule 6002 would not be applicable.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to enable the United States trustee to review, object to, or to otherwise be heard regarding the custodian's report and accounting. See §§307 and 543 of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

Subdivision (b) is amended to conform to the language of §102(1) of the Code.

**Rule 6003. Interim and Final Relief Immediately
Following the Commencement of the Case—
Applications for Employment; Motions for
Use, Sale, or Lease of Property; and Motions
for Assumption or Assignment of Executory
Contracts**

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding the following: