

- Form
- 22A. Chapter 7 Statement of Current Monthly Income and Means-Test Calculation.
- 22B. Chapter 11 Statement of Current Monthly Income.
- 22C. Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income.
23. Debtor's Certification of Completion of Post-petition Instructional Course Concerning Personal Financial Management.
24. Certification to Court of Appeals by All Parties.
- 25A. Plan of Reorganization in Small Business Case under Chapter 11.
- 25B. Disclosure Statement in Small Business Case under Chapter 11.
- 25C. Small Business Monthly Operating Report.
26. Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest.

### BANKRUPTCY RULES

EFFECTIVE DATE; APPLICATION; SUPERSEDEURE OF PRIOR RULES; TRANSMISSION TO CONGRESS

Sections 2 to 4 of the Order of the Supreme Court, dated Apr. 25, 1983, provided:

"2. That the aforementioned Bankruptcy Rules shall take effect on August 1, 1983, and shall be applicable to proceedings then pending, except to the extent that in the opinion of the court their application in a pending proceeding would not be feasible or would work injustice, in which event the former procedure applies.

"3. That the Bankruptcy Rules, heretofore prescribed by this Court, be, and they hereby are, superseded by the new rules, effective August 1, 1983.

"4. That the Chief Justice be, and he hereby is, authorized to transmit these new Bankruptcy Rules to the Congress in accordance with the provisions of Section 2075 of Title 28, United States Code."

### Rule 1001. Scope of Rules and Forms; Short Title

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding.

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

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

Section 247 of Public Law 95-598, 92 Stat. 2549 amended 28 U.S.C. § 2075 by omitting the last sentence. The effect of the amendment is to require that procedural rules promulgated pursuant to 28 U.S.C. § 2075 be consistent with the bankruptcy statute, both titles 11 and 28 U.S.C. Thus, although Rule 1001 sets forth the scope of the bankruptcy rules and forms, any procedural matters contained in title 11 or 28 U.S.C. with respect to cases filed under 11 U.S.C. would control. See 1 Collier, *Bankruptcy* ¶3.04 [2][c] (15th ed. 1980).

28 U.S.C. § 151 establishes a United States Bankruptcy Court in each district as an adjunct to the district court. This provision does not, however, become effective until April 1, 1984. Public Law 95-598, § 402(b). From October 1, 1979 through March 31, 1984, the courts of bankruptcy as defined in § 1(10) of the Bankruptcy Act, and created in § 2a of that Act continue to be the courts of bankruptcy. Public Law 95-598, § 404(a). From their effective date these rules and forms are to be applicable in cases filed under chapters 7, 9, 11 and 13 of title 11 regardless of whether the court is established by the

Bankruptcy Act or by 28 U.S.C. § 151. Rule 9001 contains a broad and general definition of "bankruptcy court," "court" and "United States Bankruptcy Court" for this purpose.

"Bankruptcy Code" or "Code" as used in these rules means title 11 of the United States Code, the codification of the bankruptcy law. Public Law 95-598, § 101. See Rule 9001.

"Bankruptcy Act" as used in the notes to these rules means the Bankruptcy Act of 1898 as amended which was repealed by § 401(a) of Public Law 95-598.

These rules apply to all cases filed under the Code except as otherwise specifically stated.

The final sentence of the rule is derived from former Bankruptcy Rule 903. The objective of "expeditious and economical administration" of cases under the Code has frequently been recognized by the courts to be "a chief purpose of the bankruptcy laws." See *Katchen v. Landy*, 382 U.S. 323, 328 (1966); *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 346-47 (1874); *Ex parte Christy*, 44 U.S. (3 How.) 292, 312-14, 320-22 (1845). The rule also incorporates the wholesome mandate of the last sentence of Rule 1 of the Federal Rules of Civil Procedure. 2 Moore, *Federal Practice* ¶1.13 (2d ed. 1980); 4 Wright & Miller, *Federal Practice and Procedure-Civil* § 1029 (1969).

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

Title I of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (hereinafter the 1984 amendments), created a new bankruptcy judicial system in which the role of the district court was substantially increased. 28 U.S.C. § 1334 confers on the United States district courts original and exclusive jurisdiction over all cases under title 11 of the United States Code and original but not exclusive jurisdiction over civil proceedings arising under title 11 and civil proceedings arising in or related to a case under title 11.

Pursuant to 28 U.S.C. § 157(a) the district court may but need not refer cases and proceedings within the district court's jurisdiction to the bankruptcy judges for the district. Judgments or orders of the bankruptcy judges entered pursuant to 28 U.S.C. § 157(b)(1) and (c)(2) are subject to appellate review by the district courts or bankruptcy appellate panels under 28 U.S.C. § 158(a).

Rule 81(a)(1) F.R.Civ.P. provides that the civil rules do not apply to proceedings in bankruptcy, except as they may be made applicable by rules promulgated by the Supreme Court, e.g., Part VII of these rules. This amended Bankruptcy Rule 1001 makes the Bankruptcy Rules applicable to cases and proceedings under title 11, whether before the district judges or the bankruptcy judges of the district.

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

The citation to these rules is amended to conform to the citation form of the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, and Federal Rules of Criminal Procedure.

### PART I—COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF

#### Rule 1002. Commencement of Case

(a) PETITION. A petition commencing a case under the Code shall be filed with the clerk.

(b) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the petition filed pursuant to subdivision (a) of 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

Under §§ 301-303 of the Code, a voluntary or involuntary case is commenced by filing a petition with the

bankruptcy court. The voluntary petition may request relief under chapter 7, 9, 11, or 13 whereas an involuntary petition may be filed only under chapter 7 or 11. Section 109 of the Code specifies the types of debtors for whom the different forms of relief are available and §303(a) indicates the persons against whom involuntary petitions may be filed.

The rule in subdivision (a) is in harmony with the Code in that it requires the filing to be with the bankruptcy court.

The number of copies of the petition to be filed is specified in this rule but a local rule may require additional copies. This rule provides for filing sufficient copies for the court's files and for the trustee in a chapter 7 or 13 case.

Official Form No. 1 may be used to seek relief voluntarily under any of the chapters. Only the original need be signed and verified, but the copies must be conformed to the original. See Rules 1008 and 9011(c). As provided in §362(a) of the Code, the filing of a petition acts as a stay of certain acts and proceedings against the debtor, property of the debtor, and property of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

Rules 1002(a), governing a voluntary petition, 1003(a), governing an involuntary petition, and 1003(e), governing a petition in a case ancillary to a foreign proceeding, are combined into this Rule 1002. If a bankruptcy clerk has been appointed for the district, the petition is filed with the bankruptcy clerk. Otherwise, the petition is filed with the clerk of the district court.

The elimination of the reference to the Official Forms of the petition is not intended to change the practice. Rule 9009 provides that the Official Forms "shall be observed and used" in cases and proceedings under the Code.

*Subdivision (b)* which provided for the distribution of copies of the petition to agencies of the United States has been deleted. Some of these agencies no longer wish to receive copies of the petition, while others not included in subdivision (b) have now requested copies. The Director of the Administrative Office will determine on an ongoing basis which government agencies will be provided a copy of the petition.

The number of copies of a petition that must be filed is a matter for local rule.

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*Subdivision (b)* is derived from Rule X-1002(a). The duties of the United States trustee pursuant to the Code and 28 U.S.C. §586(a) require that the United States trustee be apprised of the commencement of every case under chapters 7, 11, 12 and 13 and this is most easily accomplished by providing that office with a copy of the petition. Although 28 U.S.C. §586(a) does not give the United States trustee an administrative role in chapter 9 cases, §1102 of the Code requires the United States trustee to appoint committees and that section is applicable in chapter 9 cases pursuant to §901(a). It is therefore appropriate that the United States trustee receive a copy of every chapter 9 petition.

Notwithstanding subdivision (b), pursuant to Rule 5005(b)(3), the clerk is not required to transmit a copy of the petition to the United States trustee if the United States trustee requests that it not be transmitted. Many rules require the clerk to transmit a certain document to the United States trustee, but Rule 5005(b)(3) relieves the clerk of that duty under this or any other rule if the United States trustee requests that such document not be transmitted.

### Rule 1003. Involuntary Petition

(a) TRANSFEROR OR TRANSFEREE OF CLAIM. A transferor or transferee of a claim shall annex to the original and each copy of the petition a

copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.

(b) JOINDER OF PETITIONERS AFTER FILING. If the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as provided in §303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.

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

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*Subdivision (a)*. Official Form No. 11 (Involuntary Case: Creditors' Petition), is prescribed for use by petitioning creditors to have a debtor's assets liquidated under chapter 7 of the Code or the business reorganized under chapter 11. It contains the required allegations as specified in §303(b) of the Code. Official Form 12 is prescribed for use by fewer than all the general partners to obtain relief for the partnership as governed by §303(b)(3) of the Code and Rule 1004(b).

Although the number of copies to be filed is specified in Rule 1002, a local rule may require additional copies.

Only the original need be signed and verified, but the copies must be conformed to the original. See Rules 1008 and 9011(c). The petition must be filed with the bankruptcy court. This provision implements §303(b) which provides that an involuntary case is commenced by filing the petition with the court.

As provided in §362 of the Code, the filing of the petition acts as a stay of certain acts and proceedings against the debtor, the debtor's property and property of the estate.

*Subdivision (c)* retains the explicitness of former Bankruptcy Rule 104(d) that a transfer of a claim for the purpose of commencing a case under the Code is a ground for disqualification of a party to the transfer as a petitioner.

Section 303(b) "is not intended to overrule Bankruptcy Rule 104(d), which places certain restrictions on the transfer of claims for the purpose of commencing an involuntary case." House Report No. 95-595, 95th Cong., 1st Sess. (1977) 322; Senate Report No. 95-989, 95th Cong., 2d Sess. (1978) 33.

The subdivision requires disclosure of any transfer of the petitioner's claim as well as a transfer to the petitioner and applies to transfers for security as well as unconditional transfers. *Cf. In re 69th & Crandon Bldg. Corp.*, 97 F.2d 392, 395 (7th Cir.), cert. denied, 305 U.S. 629 (1938), recognizing the right of a creditor to sign a bankruptcy petition notwithstanding a prior assignment of his claim for the purpose of security. This rule does not, however, qualify the requirement of §303(b)(1) that a petitioning creditor must have a claim not contingent as to liability.

*Subdivision (d)*. Section 303(c) of the Code permits a creditor to join in the petition at any time before the case is dismissed or relief is ordered. While this rule does not require the court to give all creditors notice of the petition, the list of creditors filed by the debtor affords a petitioner the information needed to enable him to give notice for the purpose of obtaining the copetitioners required to make the petition sufficient.