

COMMITTEE NOTES ON RULES—2008 AMENDMENT

The rule is amended to reflect the 2005 amendments to the Code, which repealed §304 and added chapter 15.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

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

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

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subs. (b) and (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

[Rule 1012. Examination of Debtor, Including Discovery, on Issue of Nonpayment of Debts in Involuntary Cases.] (Abrogated Mar. 30, 1987, eff. Aug. 1, 1987)

NOTES OF ADVISORY COMMITTEE ON RULES—1987

This rule is abrogated. The discovery rules apply whenever an involuntary petition is contested. Rule 1018.

Rule 1013. Hearing and Disposition of a Petition in an Involuntary Case

(a) **CONTESTED PETITION.** The court shall determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter any other appropriate order.

(b) **DEFAULT.** If no pleading or other defense to a petition is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief requested in the petition.

[(c) **ORDER FOR RELIEF**] (Abrogated Apr. 22, 1993, eff. Aug. 1, 1993)

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rule 115(a) and (c) and applies in chapter 7 and 11 cases. The right to trial by jury under §19a of the Bankruptcy Act has been abrogated and the availability of a trial by jury is within the discretion of the bankruptcy judge pursuant to 28 U.S.C. §1480(b). Rule 9015 governs the demand for a jury trial.

Subdivision (b) of Rule 1013 is derived from former Bankruptcy Rule 115(c) and §18(e) of the Bankruptcy Act. If an order for relief is not entered on default, dismissal will ordinarily be appropriate but the court may postpone definitive action. See also Rule 9024 with respect to setting aside an order for relief on default for cause.

Subdivision (e) of former Bankruptcy Rule 115 has not been carried over because its provisions are covered by §303(i) of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Reference to the Official Form number is deleted in anticipation of future revision and renumbering of the Official Forms.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

Subdivision (c) is abrogated because the official form for the order for relief was abrogated in 1991. Other

amendments are stylistic and make no substantive change.

Rule 1014. Dismissal and Change of Venue

(a) **DISMISSAL AND TRANSFER OF CASES.**

(1) *Cases Filed in Proper District.* If a petition is filed in the proper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

(2) *Cases Filed in Improper District.* If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

(b) **PROCEDURE WHEN PETITIONS INVOLVING THE SAME DEBTOR OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS.** If petitions commencing cases under the Code are filed in different districts by or against (1) the same debtor, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, on motion filed in the district in which the petition filed first is pending and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the court may determine, in the interest of justice or for the convenience of the parties, the district or districts in which the case or cases should proceed. Except as otherwise ordered by the court in the district in which the petition filed first is pending, the proceedings on the other petitions shall be stayed by the courts in which they have been filed until the determination is made.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Bankruptcy Rule 116 which contained venue as well as transfer provisions. Public Law 95-598, however, placed the venue provisions in 28 U.S.C. §1472, and no purpose is served by repeating them in this rule. Transfer of cases is provided in 28 U.S.C. §1475 but this rule adds the procedure for obtaining transfer. Pursuant to 28 U.S.C. §1472, proper venue for cases filed under the Code is either the district of domicile, residence, principal place of business, or location of principal assets for 180 days or the longer portion thereof immediately preceding the petition. 28 U.S.C. §1475 permits the court to transfer a case in the interest of justice and for the convenience of the parties. If the venue is improper, the court may retain or transfer the case in the interest of justice and for the convenience of the parties pursuant to 28 U.S.C. §1477.

Subdivision (a) of the rule is derived from former Bankruptcy Rule 116(b). It implements 28 U.S.C. §§1475 and 1477 and clarifies the procedure to be followed in requesting and effecting transfer of a case. Subdivision (a) protects the parties against being subjected to a transfer except on a timely motion of a party in inter-